Manitoba
Agriculture

Land Leasing Agreement

FARM BUSINESS MANAGEMENT

90-04926/

PREFACE

This publication outlines the financial, legal and tax considerations of leasing land in Manitoba. It is designed to assist landlords and tenants in developing a fair and equitable leasing arrangement.

The landlord and tenant should study the material carefully and prepare a written agreement to suit their individual situation. In longer term agreements, both parties should remember that economic conditions are uncertain. For this reason, agreements in excess of three years should provide for a periodic review of the essential terms.

Sample lease forms are included in this publication. The factsheet "Land Leasing Agreements" is also available, providing specific instructions on completing a lease agreement. It also assists you in determining an appropriate lease arrangement.

Warning: If you plan to transfer farmland to a child using the family farm rollover provision of the Income Tax Act, you may not qualify if you rent your land to someone other than a spouse or child. This could result in the capital gain rollover being disallowed creating a substantial tax liability. Consult a lawyer, accountant or Farm Management Specialist for further information.

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LAND LEASING AGREEMENTS

I. INTRODUCTION TO LAND LEASING

The large capital investment needed to own and operate a farm today can make renting farm land a good alternative to ownership. For beginning and small operators, leasing land provides a way to increase income without taking on a large debt load. For large producers, renting provides an effective and flexible means of reducing unit costs.

A farming operation's long-run success and the return on investment of a landlord's property will depend upon the tenant's farming abilities, land productivity, and terms of the lease. Some farmers have developed problems when following the "going rate" or traditional leasing practices. It is possible to avoid these problems by preparing a suitable rental arrangement (lease type and terms) after carefully considering the financial, legal, and tax implications of leasing land.

Advantages of Leasing Land:

- Capital investment may be kept at lower levels, freeing up capital to purchase farm inputs.
- The risks of production and price changes can be shared.
- It is a way to acquire suitable land for growing special crops.
- It can increase flexibility in making planning decisions. For example, a lease can allow a farmer to spread the cost of existing equipment over a larger acreage.
- It can provide an opportunity to learn about local farming practices and the quality of land in an area before buying the land.
- It's one way to earn extra income for retirement, while maintaining a hedge against inflation.

Disadvantages of Leasing Land:

- The capital gain rollover provision is lost unless the land is rented to a child or spouse.
- Rent paid over time does not build up equity.
- Appreciation in land values goes to the landlord.
- The tenant has no sense of ownership.
- The tenant normally has no security of tenure. For example, cancellation of a lease could leave a tenant in a high cost situation if the purpose of the lease was to spread out unit costs of buying new farm implements.
- Short term leases discourage long term farming practices which promote production efficiency, soil conservation and land improvements.

II. REQUIREMENTS FOR A SUCCESSFUL LEASE

Compatibility and Honesty

The most important aspect of any lease agreement is the ability of landlord and tenant to get along and quickly resolve any disagreements. Even under the most compatible situations, there are times of disagreement. The written lease should include an arbitration provision to settle any disagreements. Arbitration by an outside party could resolve the disagreement at a lower cost than going to court.

A landlord in a crop-share leasing arrangement must also be concerned about the integrity of the tenant. The landlord depends on the tenant to give him or her the specified share of crop to which he or she is entitled.

Equitable Terms

Terms of a lease agreement should be fair to both landlord and tenant. An unfair arrangement is unlikely to continue and will reduce the chance for both parties to realize a reasonable profit.

Written Agreement

A written agreement allows each party to know what is expected. It will prevent misunderstanding by having both the tenant and landlord think through a fair and reasonable lease. Each party will know what his or her rights and responsibilities are.

Flexibility

A lease agreement should recognize that the interests, ambitions and requirements of people change over time. Economic and social conditions of farming also change quickly. Enough flexibility should be in the written agreement to permit an equitable adjustment to unexpected situations.

Suitability

In each leasing situation, the arrangement should fulfill the needs of the landlord and the tenant. The lease should be of long enough duration to permit the tenant to adopt long-term production practices. A longer term lease will give the tenant more security, and encourage him or her to use good management practices. The lease should also be simple enough to be workable.

III. WRITTEN AGREEMENTS

A written lease serves as a reference in a case of disputes and assists in reaching a clear understanding between landlord and tenant. All leases should include the following important terms:

Names and Addresses of Tenant and Landlord

Description of Property to be Rented

An exact legal description of the rental property must be recorded if the lease is to be registered in the Land Titles Office. Any permanent buildings and areas excluded from the lease must be specified. For example, a landowner may wish to exclude the farmhouse and continue to reside on the property.

Length of the Lease

The agreement must state the duration of the lease, including the date it begins and the date it ends. Since economic conditions may change, agreements in excess of three years should provide for a periodic review of the essential terms.

Amount and Date of Rental Payments

Negotiation between the landlord and tenant and the type of lease agreement will determine the amount of rent. The rent will either be a share of crop production or a cash amount. Date(s) of required rental payments should also be spelled out in the written agreement. A penalty clause should also be included to indicate any penalties on the late payment of rent.

Responsibility for Taxes

Taxes are the landlord's responsibility unless otherwise specified in the written agreement.

Compensation for Repairs to Buildings, Fences, and Improvements

The written agreement should state who is responsible for repairs to buildings, fences, and improvements, and how the expenses will be shared. Usually the tenant is responsible for all minor repairs.

Rights, Responsibilities, and Compensation for Major Improvements

Lease provisions should be made to compensate the tenant for major improvements which extend beyond the term of the lease. The landlord would then depreciate the asset and reimburse the tenant when the lease terminates. The depreciation rate to be used should be spelled out in the lease. Major improvements include building and fence construction, erosion control, water development, and clearing and breaking. A tenant should be required to obtain the landlord's written permission before making any major improvements. It is also important to outline how improvements will be evaluated and the timing of compensation payments.

For instance, if a tenant clears and breaks leased land, the landlord may compensate the tenant by not collecting any rent on the improved land for a number of years.

The years of free rent should relate to the fair market value of the improvement made by the tenant, interest rates and the normal rent that would be obtained by the landlord on the **improved** land.

To determine the number of years of free rent, the value of the improvement could be considered as if it were a loan. Once the interest rate and value of rent is known, the number of rent-free years can be calculated as shown in the following example.

Example:

If the value of a land improvement was $250 per hectare, the interest rate was 10 percent, and the normal rent on the improved land was $50 per hectare, the number of rent-free years would be 7 (from Column A of the following table).

Year (A)	Beginning Principal (Improvement Value) (B)	Interest for Year (C) B x i**	Outstanding Principal and Interest (D) B+C	Yearly Payment (Rent) (E) ***	Ending Principal (Improvement Value) (F) D−E
1	$250.00*	$25.00	$275.00	$50.00	$225.00
2	$225.00	$22.50	$247.50	$50.00	$197.50
3	$197.50	$19.75	$217.25	$50.00	$167.25
4	$167.25	$16.73	$183.98	$50.00	$133.98
5	$133.98	$13.40	$147.38	$50.00	$ 97.38
6	$ 97.38	$ 9.74	$107.12	$50.00	$ 57.12
7	$ 57.12	$ 5.71	$ 62.83	$50.00	$ 12.83
8	$ 12.83	$ 1.28	$ 14.11	$14.11	$ 0.00

* *Initial or Beginning Principal = Initial Improvement Value*

** *Interest rate per annum (in decimals) = i*

*** *Yearly Payment = Normal Rent on* ***Improved*** *Land*

The table shows the loan equivalent of the $250 per hectare invested in land improvement (Column B, the Improvement Value). It increases at first (Column D) as a result of accrued interest on the "loan", (Column C) then decreases when the yearly payment is made (Column E, normal rent). This process is repeated each year until the amount is repaid. The **number of full payments** made approximates the number of rent-free years the tenant should enjoy.

Amortization tables or a financial calculator can also be used to determine the number of payments to be made.

Rights to Assign or Sublet the Lease

The written agreement should contain a clause which prevents the tenant from subletting or assigning the lease to another individual, without the written consent of the landlord.

Restrictions and Responsibilities Regarding Production Practices and Management Decisions

The written agreement should specify production practices and management decisions which the landlord insists be carried out by the tenant. The following factors should be considered when drawing up a lease:

- weed control (perennial and broadleaf)
- amount of summerfallow
- use of fertilizer and chemicals
- fall tillage
- erosion control practices
- rotation for disease control
- crop insurance
- quota allocation
- delivery and sale of grain
- permission for the use of soil residual herbicides, eg. Atrazine or Glean.

A party to a lease arrangement who incurs a loss due to a change in the required cropping decisions as outlined by the agreement should be reimbursed to the extent of the reduced income.

Grain Storage Responsibility

The written agreement should outline the minimum amount of grain storage, if any, to be provided by the landlord. If additional grain storage is required it is usually provided by the tenant.

Grain Stored On Land At Commencement and Termination of Lease

The written agreement should specify how long undelivered grain can be stored on the rented land without storage charges.

Right of Entry

The landlord or a representative of the landlord should have the right to inspect the rented property and remove any stored grain which wasn't sold at the start of the lease. Similarly, the tenant should be able to remove his or her share of grain stored on the rented land and to complete the harvest of the crop after termination of the lease agreement.

If no obligation exists for a tenant to complete the fall work at the end of each year (and at the end of the lease term), an incoming tenant, purchaser or landlord should have the right to prepare the land for next year's crop after harvest in the last year of the agreement.

Arbitration

An arbitration clause should be included in the written agreement. Any disagreement which cannot be resolved between the landlord and tenant

by mutual agreement, be referred to a third party who would act as an arbitrator. This approach is usually preferable to a potentially expensive court case.

Option to Buy

Occasionally, the landlord may give the tenant an option to buy the land under lease at some time during the lease, or at the end of the lease term. Another alternative is to give the tenant the "right of first refusal". The right of first refusal gives the tenant the right to buy the land at the same terms and conditions offered by another purchaser during the term of the lease.

Compensation for Property Damages

At times, loss due to crop or property damage may be caused by an outside party. In this situation, the party to the lease suffering the loss should receive compensation. For example, if a payment is made as a result of crop damage, a cash rent tenant should receive the entire compensation. In the case of a crop-share rent, the compensation should be shared in the same proportion as the crop is shared. Where there has been permanent damage to the land, the tenant should receive the portion of the compensation due to crop damage, while the landlord receives the balance.

Miscellaneous

The landlord and tenant may include a clause which would terminate the agreement should certain natural disasters occur. For example, if the land was flooded and the tenant was unable to use the property, it would normally be unfair to insist that the tenant continue to pay the cash rental. However, if the amount of cash rental takes into account the flooding risk, the tenant would be obligated to pay rent.

Another example of unforeseen circumstances is the installation of a highway, gas line, hydro line, etc. on the rented land, creating inconvenience and additional operating costs for the tenant. In some instances, it may be desirable to renegotiate the terms of the lease or compensate the tenant for the added costs or reduced income which he or she may incur.

Any lease agreement must take into account the provisions of the Dower Act, which guarantees a landlord's spouse certain rights on the homestead property — that is, the land solely owned by the owner where he or she has lived since marriage. The spouse must sign a Consent of Spouse form on lease agreements that include the homestead property.

Once all the requirements of The Dower Act have been completed and the lease agreement signed, it is final and binding. If the signatures are witnessed and the witness completes the "Affidavit of Execution", it is not necessary at a later date to prove the signatures. If they are not witnessed or the witness does not complete the "Affadavit of Execution", signatures may have to be proved.

To renew the lease, complete all required legal documents in the same way as when the lease was established.

IV. TYPES OF LAND LEASING AGREEMENTS

Three common land leasing agreements on cropland include Crop Share, Cash Rent and Flexible Cash Rent. Custom farming agreements are often used when leases are not appropriate for landlords, particularly when dealing with special tax implications. Landlords who wish to preserve the capital gains rollover provision should use a custom farming agreement as described at the end of this chapter.

The division of income varies with each leasing agreement. With Crop Share, the most common division is a one-third share of all crop sales to the landlord and two-thirds share to the tenant. The income is divided as grain is sold. For Cash Rental agreements, the tenant receives income from all crop sales but pays the landlord a fixed dollar amount each year as rent. Cash Rent is often paid in advance. In the case of the Flexible Cash Rent, the tenant receives all crop income but the dollar amount paid to the landlord each year varies with the grain price. Flexible Cash Rent incorporates features of both Crop Share and Cash Rent leases.

Traditional leasing practices (or the "going rate") established in an area have considerable influence on the leasing arrangements used. The supply and demand for leased land is often the most critical factor in determining lease rates. However, other, more specific conditions should also be considered. These include:

- the quality and condition of the land
- risk sharing
- lease duration
- payment schedule
- grain storage
- management skills.

A careful analysis of the different types of land leasing agreements is necessary to determine a rental rate that will be fair to both parties. By studying the examples in this book and using the worksheets provided in the appendix, you will be able to arrive at an equitable rental agreement for your situation.

Considerations in Selecting a Leasing Agreement

A landlord and tenant should consider these factors when selecting an appropriate lease agreement:

Sharing Production and Marketing Risk

The distribution of risk between tenant and landlord will depend upon the type of leasing agreement. Two types of risk are present in land leasing agreements:

1) ***Marketing Risk***
2) ***Production Risk***

The main income variables as a result of marketing risk are price variations, type of crops grown, delivery opportunities, storage costs, and contract losses. The most important production risks are variations in crop yields due to

weather, insects, disease, input use and general management. The following table illustrates marketing and production risk borne by a landlord for the different leasing agreements.

Risk Borne by Landlord

Type of Lease	Marketing Risk	Production Risk
Crop Share Lease	Yes	Yes
Flexible Cash Lease	Yes	No
Cash Lease	No	No

The return on an investment should relate to the amount of risk taken. In the long run, a landlord should receive a higher total rent from Crop Share Leases, lower rent on a Cash Rental and medium rent for a Flexible Cash Lease.

Method and Timing of Rental Payments

Timing of rental payments and the method for rent calculations depends on the type of lease. In a Crop Share Lease, the landlord pays a share of the input costs and receives a production share as the crop is sold. In a Cash or Flexible Cash Lease, the amount and date of rental payment(s) will be agreed to by the landlord and tenant. Often, it will be split into spring and fall payments. The Flexible Cash Lease has a cash rental payment that fluctuates with the price of a specified grade and variety of grain.

Length of Lease Terms

Crop Share and Flexible Cash Leases can usually be extended without renegotiating any lease terms. Cash Leases, however, require periodic renegotiation to reflect changes in grain prices and economic conditions. A longer lease term encourages a tenant to adopt farming practices which maintain or improve the land.

Proper Tillage Practices

Often, a landlord does not have a say in the tillage or farming practices of a tenant. However, a term should be included requiring the tenant to complete fall tillage each year. Any landlord who is concerned about soil conservation practices should ensure that he or she has a right to influence the tenant's cropping decisions and farming practices.

Ease of Rent Calculations

A rental calculation in a Crop Share Lease requires accurate records on crop yields and input costs on each field and crop. Cash and Flexible Cash Leases require very simple rent calculations.

Considerations in Calculating Fair Rent

Realistic estimates should be used in calculating costs for each party in a lease agreement. Annual costs of the landlord and tenant include depreciation, interest on investment, cash operating expenses, labour, and management. All tenant's costs arising from work on both his or her own land and rented land should be averaged over the entire cultivated acreage. For example, the tenant's depreciation cost and investment on machinery should be averaged over the tenant's total cultivated acreage.

More information on cost calculations is available from your local agricultural office.

To value the landlord's investment allowance, keep in mind that land normally has two types of earnings:

1. An annual interest return on investment (rent).
2. Long term appreciation in value (capital gain).

To provide a reasonable total rate of return say of 14-16% on the investment in land, rental and capital gains earnings must be combined. For instance, if land values increased at an average annual compound rate of 10% in the past, then a 4% investment allowance could provide a fair return on the investment in land. The 4% investment allowance will be used in the examples to determine the landlord's contribution to production when using the contributions approach.

Crop Share Lease

The Crop Share Lease is the most common method of leasing land in Manitoba. In most crop share leases, the landlord receives a one-third share of all crops grown. Often, the landlord pays one-third of input costs such as fertilizer and weed spray.

If a crop share arrangement does not include shared input costs, the landlord's crop share should be reduced accordingly. If this is the case, a Cash or Flexible Cash Lease agreement adjusted for production risk might provide a more suitable rental arrangement.

Where pasture land is included in the leased land, a separate cash lease should be negotiated or an allowance made for it in the crop share agreement.

Advantages of Crop Share Leases:

- Landlord and tenant share risks associated with grain prices, quotas and yields in the same proportion as the share of crop.
- Rent varies directly with the value of production and is paid as the crop is sold, rather than in advance.
- Landlord may pay part of the crop inputs (i.e. fertilizer and chemicals).

- An inexperienced tenant may be able to benefit from the management expertise of a landlord with farming experience.
- If the tenant is a good manager, the landlord can make more money in the long run on a crop share basis than in cash agreements.
- The tenant has an incentive to adopt long term farming practises to improve productivity and conserve the soil.

Disadvantages of Crop Share Leases:

- A tenant's farming skills are shared with the landlord.
- The landlord may wish to influence cropping decisions and farming practices on the leased land.
- If the tenant is a poor manager, the landlord can make less money on a crop share agreement than with other types of agreements.
- The tenant must keep detailed records on production and input costs (production, quotas, cash advances, grain fed to livestock).
- Rent received by a landlord depends on the integrity of the tenant.

Amount of Crop Share Rental

A fair crop share rent should relate to **contributions** of each party to production. However, the type of lease agreement and negotiating abilities of the landlord and tenant still determine exactly how income will be shared. Small differences in crop share ratios are often less important than the tenant's honesty and farming abilities.

For instance, if you rent land to a good farm manager, you receive as much rent on a one-third crop share arrangement as you do on a 40% crop share arrangement if the tenant increases the value of crop production by 20%.

The following example illustrates the contributions approach as a means of determining crop share rent.

Contributions Approach to Determining Crop Share Rent (Example)

	Per Cult. Ha.	(Per Cult. Acre)
Landlord's Costs		
Investment Cost (at 4% of fair market value - $988/ha or $400/acre)	$ 39.52	($16.00)
Taxes	$ 17.29	($ 7.00)
Grain Storage (if provided)	$ 7.41	($ 3.00)
Total Landlord's Costs	**$ 64.22**	**($26.00)**
Tenant's Costs *		
Operating Costs		
Seed	$ 12.35	($ 5.00)
Fuel, Oil and Repairs	$ 39.52	($16.00)
Insurance	$ 14.82	($ 6.00)
Miscellaneous Costs	$ 14.82	($ 6.00)
Interest on Operating	$ 12.35	($ 5.00)
Total Operating Costs	**$ 93.86**	**($38.00)**
Fixed Costs		
Interest on Machinery **	$ 19.76	($ 8.00)
Depreciation	$ 24.70	($10.00)
Labour **	$ 39.52	($16.00)
Total Fixed Costs	**$ 83.98**	**($34.00)**
Total Tenant's Costs	**$177.84**	**($72.00)**

Landlord's Share of Total Cost = [$64.22 / (64.22 + 177.84)] × 100 = 27%
([$26.00 / (72 + 26)] × 100 = 27%)

Tenant's Share of Total Cost = [$177.84 / (177.84 + 64.22)] × 100 = 73%
([$72.00 / (72 + 26)] × 100 = 73%)

* Fertilizer and chemical costs are not included as a contribution. It is assumed that these costs will be shared proportionately between the landlord and tenant.

** Depending on the relationship between the amount of land leased and the amount of land owned, the tenant may be willing to forego all or part of the investment and labour costs since these are fixed costs. For example, a farmer with a large owned land base plans to rent an additional quarter. He or she will probably not include investment costs (and perhaps only a portion of labour costs). These costs do not increase with the amount of land farmed for a farmer with a large landbase.

A worksheet is provided in Appendix 1 to assist with the calculation of a crop-share ratio.

Profitability of a Crop Share Lease Agreement

The income approach is used to determine the profitability of renting a parcel of land on a crop share basis. Because land productivity will greatly affect profitability, it is important to work through a calculation of expected gross returns per cultivated area (see example below). Comparisons can then be made between different parcels of land and different types of leasing arrangements. Before renting land, tenants must also assess whether it will be more profitable to rent land using existing equipment or purchasing larger equipment. By using existing equipment, the "fixed cost" per acre can be reduced leaving more profit.

Calculation of Expected Gross Returns Per Cultivated Hectare (Example)

Type Of Crop (A)	Number Of Hectares (B)	Yield Per Ha (C) (Tonnes)	Estimated Final Realized Price Per Tonne (D)	Gross Returns Per Ha (E) (C x D)	Total Expected Return (F) (B x E)
Wheat	130	2.35	$110.23	$259.00	$33,670
Flax	65	1.13	$275.58	$311.40	$20,241
Canola	65	1.57	$264.55	$415.30	$26,994
TOTALS:	260(G)				$80,905(H)

Expected Gross Returns Per Cultivated Ha (J) = $\frac{H}{G}$ = $\frac{\$80,905}{260 \text{ hectares}}$ = $311.17

Calculation of Expected Gross Returns Per Cultivated Acre (Example)

Type Of Crop (A)	Number Of Acres (B)	Yield Per Acre (C) (Bushels)	Estimated Final Realized Price Per Bushel (D)	Gross Returns Per Acre (E) (C x D)	Total Expected Return (F) (B x E)
Wheat	320	35	$3.00	$105.00	$33,600
Flax	160	18	$7.00	$126.00	$20,160
Canola	160	28	$6.00	$168.00	$26,880
TOTALS:	640(G)				$80,640(H)

Expected Gross Returns Per Cultivated Acre (J) = $\frac{H}{G}$ = $\frac{\$80,640}{640 \text{ acres}}$ = $126.00

The following projected crop share budget illustrates the use of the **income approach.**

Projected Crop Share Budget

	Per Hectare	(Per Acre)
Expected Gross Returns (J)	$311.22	($126.00)
Less: Landlord's share (27%)	$ 83.98	($ 34.00)
	$227.24	($ 92.00)
Expected Input Costs:		
Fertilizer	$ 49.40	($ 20.00)
Chemicals	$ 39.52	($ 16.00)
	$ 88.92	($ 36.00)
Less: Landlord's share (27%)	$ 24.70	($ 10.00)
	$ 64.22	($ 26.00)
Gross Margin	**$163.02**	**($ 66.00)**
Operating Expenses:		
Seed	$ 12.35	($ 5.00)
Fuel, Oil and Repairs	$ 39.52	($ 16.00)
Insurance	$ 14.82	($ 6.00)
Miscellaneous	$ 14.82	($ 6.00)
Interest on Operating	$ 12.35	($ 5.00)
	$ 93.86	($ 38.00)
Income before Depreciation	$ 69.16	($ 28.00)
Less: Depreciation	$ 24.70	($ 10.00)
Net Income *	**$ 44.46**	**($ 18.00)**

* Net Income is the return to labour and management and machinery investment.

Terms and Conditions

In addition to the lease terms listed for all lease agreements, a crop share lease agreement should include terms covering:

- ***Cropping Decisions***

Both parties should agree who will make the cropping decisions. Normally, the tenant decides which crops to grow, their acreages and input use. Occasionally, the tenant may discuss cropping plans with the landlord; in some cases, the landlord may want a direct say in the cropping decisions.

- ***Use of Fertilizer and Chemicals***

Both parties should agree on the amount of crop inputs to apply and how to share these costs. It is recommended that both parties share the cost of fertilizer and chemicals in the same proportion as the crop share.

When the tenant pays all input costs, less financial incentive exists for the tenant to apply optimum levels of crop inputs than in arrangements where both parties proportionally share these costs.

Thus, the method of sharing input costs should affect the division of the crop. For example, a tenant should receive a larger crop share when he or she supplies all input costs than when some input costs are paid by the landlord.

- ***Crop Insurance***

There are two main crop insurance categories:

(a) Hail Insurance

Private companies offer insurance against hail or fire on a spot loss basis. A tenant or landlord may insure their share of the growing crop separately by purchasing insurance coverage independently from any company offering hail insurance.

(b) All Risk Crop Insurance

All risk crop insurance, offered by the Manitoba Crop Insurance Corporation, guarantees the value of a minimum level of grain production from all losses (hail, fire, theft, drought, etc.). Spot loss hail insurance is also available through the program. Under this program, only the producer (tenant) can receive any crop insurance. There are two ways to handle all risk crop insurance in a crop share lease:

1. Only the tenant insures under the program. He or she pays all required premiums and receives all indemnities.
2. The landlord and tenant decide jointly to share the costs and benefits of crop insurance in the same proportion as the crop is shared. An insurance payout is made when the average crop yield on a farm basis is below certain levels, so crops grown on rented property should not be grown elsewhere. Otherwise, a crop failure could occur on the rented property and not on any of the operator's other property. Therefore, if a landlord is to share in the proceeds of crop insurance, he or she should have an influence in the cropping decisions of a tenant.

- ***Quota Allocation***

A landlord should assess whether it is necessary to allocate quota acres.

The Canadian Wheat Board requires an actual grain producer to allocate quota acres. Since quota acres arising from rented land are not separate from quota acres farmed by the tenant, they may be allocated to the detriment of the landlord. For this reason, a clause may be included in the written agreement to specify allocation of quota acres.

Most often, the landlord will rely on a tenant's judgement and integrity to allocate quota acres to their mutual advantage. Where allocation is made by mutual agreement, the lease should specify how the acres will be assigned

when an agreement is not possible. A worksheet provided in Appendix 4 will assist you in the allocation of quota acres. Crop quota acres identified with the rented land should not be less than the rented acreage eligible for quota assignment purposes.

- ***Government Payments and Subsidies***

The landlord and tenant should agree as to who will receive any government payments and subsidies, or if these payments should be shared. Under these programs, only the producer (tenant) receives payments or subsidies. A landlord may wish to include a clause in the lease agreement to share any government payments and subsidies in the same proportion as the share of the crop (or a stated amount).

The Western Grain Stabilization Plan automatically includes all producers. If a producer does not want to be part of the program, he or she can opt out. Government subsidies such as the Prairie Crop Drought Assistance Program and the Special Canadian Grains Program are also paid directly to a producer.

- ***Delivery and Sale of Grain***

A landlord and tenant should indicate who is responsible for the delivery and sale of quota and non-quota grains. Usually the tenant is responsible for the delivery of quota grains, in accordance with prevailing quotas and market conditions. The landlord, on the other hand, often wishes to specify how non-quota grains such as canola and flaxseed are to be sold.

Sample Crop Share Lease Agreement

This lease made in duplicate this _____ day of _____ ,

A.D. 19 _____ .

BETWEEN:

_____
(landlord's name)

of _____ , _____
(address) (occupation)

in the Province of Manitoba, hereinafter called the "landlord" being the registered owner or the purchaser under an Agreement for Sale of land described below.

- and-

_____
(tenant's name)

of _____
(address)

in the Province of Manitoba, hereinafter called the "tenant".

1. Witness that in consideration of the rents, covenants, promises and agreements contained in this lease on the part of the tenant to be paid, observed and performed, the landlord DOES HEREBY LEASE TO the tenant the following farm lands and premises situated in the Province of Manitoba that is to say:

   LAND: (legal description)

   _____

   _____

   _____

   _____

   _____

Together with the following portable buildings, namely:

PORTABLE BUILDINGS:

_____

_____

_____

EXCEPTING AND RESERVING unto the landlord the following lands and buildings, namely:

LANDS RESERVED:

_____

_____

BUILDINGS RESERVED:

_____

_____

2. TERM:

This lease shall continue in force on the said land and premises for and during the term of ____ ____ years from the _____ day of _____ (month), A.D. 19 _____ to the _____ day of _____ (month), A.D. 19 _____.

3. RENTAL:

The tenant will pay to the landlord the yearly rental of _____ _____ share or portion of the whole crop of the different kinds and qualities of grain, hay, fodder and other crops which are grown on the said land during the term of this lease. This undivided share of crop shall become the property of the landlord at the time of harvest.

The tenant will also pay: (delete clause which does not apply)

(a) cash rental of $ _____ for pasture on the said land during the term of this lease to be paid on or before _____ (date) each year.

(b) cash rental as outlined below:

_____

_____

_____

_____

_____

IT IS FURTHER AGREED BY THE LANDLORD AND TENANT AS FOLLOWS, THAT IS TO SAY:

4. The tenant shall make all decisions with respect to farming the said land unless stated otherwise in this agreement.

5. The tenant shall be responsible for all farming costs of the said land unless stated otherwise in this agreement.

6. The tenant will cultivate, seed and harvest the said land in a good husbandlike manner and will not impoverish or waste the same and will use the lands and premises for the purpose of a farm only.

7. The tenant has no rights to sand, gravel, or clay, except for his own use, and he has no rights, whatsoever, to valuable stone or other such substances existing on, or under the surface of the said land.

8. The tenant will not change the natural course of any waterways on the said land, or cut down trees growing upon the land nor will he/she permit any other person to do so, without the written consent of the landlord.

9. If the tenant fulfills the terms and conditions of this agreement he/she shall and may peaceably possess and enjoy the said land for the said term, without any interruption or disturbance from the landlord or any representative of the landlord.

10. The landlord or a representative of the landlord has the right, at all reasonable times, to attend and inspect the said property. The landlord reserves the right of entry and exit over and upon the land in this agreement and to use any land and buildings expressly excluded from this agreement.

11. If either party shall fail in any respect to carry out any of the provisions of this lease agreement, the other may have the same done, and the costs shall be paid by the party failing to carry out the said provisions.

12. SEEDING:
The tenant will seed to crop all the said land under cultivation except the portion to be summerfallowed during the term of this lease. The type and acreage of each crop to be seeded shall be determined by the: (delete clause which does not apply)

    (a) tenant

    (b) tenant and landlord by mutual agreement

13. SPRAY, FERTILIZER, AND SEED TREATMENT:
When the landlord and tenant share the cost of chemicals, fertilizer, and/or seed treatment they shall mutually agree upon the amount and method of application. The actual cost of chemicals, fertilizer, and seed treatment shall be paid by: (delete clause which does not apply)

    (a) the landlord and tenant in the same proportion as the share of crop set out in this agreement

    (b) the landlord and tenant as specified below:

    _____

    _____

    _____

    _____

14. SUMMERFALLOW:
The tenant shall summerfallow, in a good husbandlike and proper manner, not less than _____ acres (hectares) of the said land each year during the term of this lease except when otherwise mutually agreed upon by the landlord and tenant.

At the termination of this lease, or any renewal of this lease, if the amount of summerfallow on the said land exceeds the sum of _____ acres (hectares), the landlord will pay to the tenant an amount equal to $ _____ per acre (hectare) for every such acre (hectare) in excess; and in the event the amount of summerfallow does not exceed the sum of _____ acres (hectares) the tenant will pay the landlord an amount equal to $ _____ per acre (hectare) on every acre (hectare) so deficient.

15. QUOTA ACREAGE ALLOCATION:
Unless otherwise agreed upon, the total quota acres (hectares) allocated to crops grown on the land in this agreement shall not be less than the total acreage on the said land eligible for quota assignment purposes. The quota acreage assigned to each crop shall be determined by: (delete clauses which do not apply)

(a) tenant

(b) landlord

(c) _____

16. DELIVERY AND SALE OF GRAIN:
The tenant shall deliver grains agreed upon by the landlord and tenant in accordance with assigned quota acres (hectares) provided for in this agreement. Grain delivery by the tenant shall be made according to prevailing quota and market conditions provided that reasonable delivery conditions exist. The additional cost of delivering quota grains in excess of _____ kilometres (miles) from the land in this agreement shall be the responsibility of the landlord. Non-quota grains shall be delivered for sale at a time mutually agreed upon by the landlord and tenant. Unless otherwise agreed upon, the landlord shall specify the place, date of delivery, and the date of sale of his/her share of non-quota grains, and in so doing assumes all responsibility for extraordinary costs associated with the delivery and sale of his/her respective share of crop.

17. STORAGE OF GRAIN:
The landlord will provide _____ tonnes (bushels) of grain storage. If additional grain storage is required this will be provided by the tenant. In the event that storage facilities do not permit the storage of grain on the land in this agreement, the tenant may remove the said grain to another location for storage purposes and such grain shall not be stored in the same bin with grain not grown on land of this lease. Such grain, wherever stored, shall belong to the landlord and tenant as provided herein.

18. GOVERNMENT PAYMENTS AND SUBSIDIES:
In the event any payment, subsidy, or other reimbursement is made under any government agency, or any marketing agency in connection with grain production, and in which the landlord is eligible to participate during the term of this lease, the amount paid for the production on the leased land shall be paid to the tenant and shared in the same proportions as the share of crop set out in this lease agreement. When the agency payment, subsidy, or other reimbursement is calculated on a maximum acreage base, and when the tenant farms an acreage exceeding this maximum base, then the

payment shall be divided (according to the ratio of acreage of land leased in this agreement to the total acreage of land farmed by the tenant as recorded in the quota book), and the divided payment identified with the leased land shall be shared in the same proportion as the share crop. The following are excluded:

_____

(Note: Landlords are not eligible to participate in contributions or payments under the Western Grain Stabilization Act.)

Where contributions are required for entitlement to any payment, subsidy, or reimbursement, the landlord and tenant shall mutually agree as to the sharing of costs and income. If mutual agreement cannot be reached, the contributions and income shall be paid in the same proportion as the crops are shared.

19. COMPENSATION:
Any compensation for property damage shall accrue to the party which has suffered the loss.

20. TAXES:
Unless otherwise agreed upon, the payment of all taxes on the land indicated in this lease shall be paid by the landlord.

21. IMPROVEMENTS:
The tenant shall not make major improvements, other than what is considered normal repair and maintenance, to the leased land or any other assets identified in this agreement without written permission of the landlord. Major improvements, which without restricting the generality of the term, shall include: water development, erosion control, fencing and building construction, clearing, breaking, and seeding to pasture and hayland. Such consent shall be attached to and form part of the lease agreement. The amount of compensation shall be an amount agreed upon by the landlord and tenant.

Title to all improvements shall vest in the landlord and no improvements shall be sold, removed, disposed of or encumbered without the written consent of the landlord.

22. REPAIR OF BUILDINGS, FENCES, AND IMPROVEMENTS:
Responsibility for normal maintenance and repair to buildings, fences, and improvements shall be as follows:

Tenant's Responsibility (list items):

_____

_____

_____

Landlord's Responsibility (list items):

_____

_____

_____

23. INSURANCE:
Insurance on all leased buildings in this agreement shall be the responsibility of the landlord.

Unless otherwise agreed upon, the landlord and tenant shall insure crops grown on the land in this agreement against loss from the following hazards:

_____
(All Risk, Hail, Fire, Theft, etc.)

The insurance against the specified risks is referred to as crop insurance hereinafter. Coverage shall consist of the following (crop, level, and amount):

_____

_____

_____

_____

The costs and benefits of this crop insurance shall be shared by: (delete clause which does not apply)

(a) landlord and tenant in the same proportion as their share of crop.

(b) _____

_____

When the landlord and tenant do not mutually agree on insurance coverage, the two parties are free to make their own arrangements regarding insurance, and, in so doing shall absorb the total coverage cost and receive all benefits.

24. SUBLETTING:
The tenant shall not sublet, or assign this lease, or any part thereof, or any interest therein without obtaining the written consent of the landlord to the sublease or assignment.

25. GRAIN STORED ON LAND AT COMMENCEMENT OF LEASE:
In the event that marketing facilities prevent the landlord from delivering the grain previously grown and stored on the said leased premises at the commencement of this lease, it is agreed that such undelivered grain may be stored on the said land for a period not exceeding _____ months after the commencement of this lease without charge for storage or interference from the tenant. However, the landlord must not deliver any other grain in priority to the grain stored on the leased premises. During this period, the landlord has the right of entry to obtain any grain or fodder which he/she has stored on the said property.

26. GRAIN REMAINING ON LAND AT TERMINATION OF LEASE:
Should harvesting and marketing conditions prevent the tenant from delivering the grain grown and stored on the leased land during the term of this lease, such grain may be harvested and removed from the landlord's property. Harvesting must be completed by May 15 and removal of stored grain completed by June 30 following the termination date of the lease agreement.

27. RENEWAL:
The term of this lease may be extended by mutual agreement between the landlord and tenant for a further period upon the same terms and conditions as contained herein, except as otherwise agreed in writing by the parties executing a renewal statement.

28. INCOMING TENANT:
An incoming tenant, purchaser, or landlord shall have the right to enter the land contained in this agreement after harvest in the fall preceding the expiration of the said term for the purpose of preparing the land for crop.

29. DEFAULT IN PAYMENTS:
If the tenant fails to pay the landlord his/her share or portion of the whole crop grown on the said land(s), or if a breach or default be made in any of the covenants herein contained by the said tenant, then, it shall be lawful for the said landlord to enter upon the said land(s) or any part thereof, in the name of the whole, and repossess and enjoy the said land(s) as if this agreement had not been executed.

30. ARBITRATION:
Any disagreement which may arise between contracting parties hereto shall, when a mutually satisfactory settlement cannot otherwise be reached, be submitted to arbitration. The arbitration authority may either be a single person mutually satisfactory to both parties, or a board of three, one member to be named by each party and a third selected by the two so chosen.

The recommendation of the arbiter or arbitration board shall be accepted as final, except in a matter of law.

31. For all purposes, the contents of this agreement shall be construed according to the laws of the Province of Manitoba.

32. The terms "landlord" and "tenant" shall include their heirs, executors, administrators, successors and approved assigns in the singular or plural number and feminine or masculine gender when the context or the parties so required; all the covenants shall be construed as being joint and several.

IN WITNESS WHEREOF the said parties hereto have hereunder set their hands and seals.

Dated this _____ day of_____ , A.D. 19 _____ .

_____ Witness	_____ Landlord	Affix Seal Here
_____ Witness	_____ Landlord	Affix Seal Here
_____ Witness	_____ Tenant	Affix Seal Here
_____ Witness	_____ Tenant	Affix Seal Here

NOTE: If spouse has a Dower Interest, THE DOWER ACT (CONSENT OF SPOUSE) sample form page 68 is inserted here

Cash Lease

In a Cash Lease, the tenant pays a fixed cash payment to the landlord for use of the land and facilities. The tenant receives all the income and pays all expenses except for property taxes, building insurance, and major building improvements.

A Cash Lease is especially suited for absentee landlords and other landlords who wish to be assured of a stable income. With widely fluctuating grain prices, cash rent may not be preferred. In this case, flexible cash rent, which is tied to grain prices, may be more appropriate.

Advantages of Cash Leases:

- The landlord receives a guaranteed return and need not be concerned about crop yields, grain prices, quota problems, crop rotations or the tenant's integrity. Because he or she accepts less risk, the rent should normally be lower than on a crop share basis.
- The tenant has more flexibility and independence in production and management decisions.
- The benefits of the tenant's farming skills are not shared with the landlord.
- The tenant is able to make contributions to the Western Grain Stabilization Plan on all the grain sales, as compared to only his or her share on a crop share lease.
- Detailed records on production and input costs are not required to determine the rental amount. The crop may be used for livestock feed or seed without having to keep accurate yield records.
- A rental figure can be determined for pasture, corrals, etc. as well as cultivated land.

Disadvantages of Cash Leases:

- The tenant assumes all production and marketing risk.
- Rent is often paid in advance of crop sales.
- The landlord does not get the benefit of high prices or unusually good crops.
- Due to the risk of changing circumstances leases are normally short term.
- The landlord has less influence on a tenant's farming practices and management decisions, and is not in as good a position to ensure long term conservation practices are followed.

Amount of Cash Rent

The existing level of cash rents likely will be a factor in establishing rent for a piece of land. However, negotiation between the landlord and tenant will determine the exact amount. Often, the tenant's ability to assume a higher

level of risk increases the rental bid. The ability to assume risk depends on the amount of debt, equipment capacity, the tenant's farming abilities and the level of equity.

Landlords and tenants (either jointly or individually) may use budget guidelines to calculate cash rents. Three methods can be used to calculate cash rent:

(1) Cost Approach

— allows a landowner to determine the minimum rent needed to cover total cash costs to include property taxes, utilities and insurance. A landlord will often try to obtain a higher rent, to enable recovery of additional costs of depreciation on buildings (if rented), and the annual interest return on the investment in land (4% of fair market value) and in buildings (10% of fair market value).

(2) Crop Share Approach

— is determined by calculating the cash rent amount normally realized by a landlord under average conditions on a crop share lease, less an adjustment for production risk. The crop share arrangement could involve the traditional 1/3 share or a crop share based on the landlord and tenant cost contributions.

For example:

Landlord's share (C) = 27%
(based on a 27:73 crop share ratio calculated on page 11)

Discount for Risk (D) = 10%
(based on a crop failure of 1 year in 10)

Adjustment for Risk (R) = C × D = 27% × 10% = 2.7%

Landlord's Adjusted Share (S) = C − R = 27% − 2.7% = 24.3%

Expected Gross Returns per Hectare (Acre) (J) = $\frac{H}{G}$ = $311.00 per hectare ($126.00 per acre)

(same as in Crop Share Example on Page 12)

Cash Rental per Hectare (Acre) (M) = S × J =
24% × $311.00 = $75.00 per hectare
(24% × $126.00 = $30.00 per acre)

Total Rent = M × G =
$75.00 × 260 ha ($30.00 x 640 acres) = $19,400

(3) Income Approach

— is determined by calculating residual income above all of the tenant's costs of production (excluding rent) for an expected yield and price. Residual income represents rent a tenant is willing to pay a landlord (per unit of land) and the net profit he or she is willing to accept.

A projected crop budget is prepared for the expected gross returns of a variety of crops less an allowance for production risk. Here is an example illustrating the use of the income approach.

Projected Crop Budget

	Per Hectare	(Per Acre)
Expected Gross Returns	$311.22	($126.00)
Less: Adjustment for Production Risk (1 crop failure in 10 years)	$ 32.11	($ 13.00)
	$279.11	**($113.00)**
Expected Average Input Costs:		
Fertilizer	$ 49.40	($ 20.00)
Chemicals	$ 39.52	($ 16.00)
	$ 88.92	**($ 36.00)**
Gross Margin	$190.19	($ 77.00)
Operating Expenses:		
Seed	$ 12.35	($ 5.00)
Fuel, Oil, Grease	$ 39.52	($ 16.00)
Insurance	$ 14.82	($ 6.00)
Miscellaneous	$ 14.82	($ 6.00)
Interest on Operating	$ 12.35	($ 5.00)
	$ 93.86	**($ 38.00)**
Income Before Rent and Depreciation	$ 96.33	($ 39.00)
Less: Deprectiation	$ 24.70	($ 10.00)
Residual Income	**$ 71.63**	**($ 29.00)**

Estimate an acceptable per unit return for your farm operation, and offer rent up to that amount to provide that return.

How to Compare Cash Rent and Crop Share

Interest:

Cash rentals are usually paid in full, in advance of harvest, (or half in spring and the balance just after harvest). Full spring payment carries no risk to the landlord because he or she can deposit the money immediately to earn interest. If only half the money is received in spring, he or she loses interest on the other half for about five months. For example, $15 per acre rent is

due on May 1 and $15 per acre is due on October 1. If the bank rates are 8%, this owner loses 50 cents per acre in interest. Although a small amount, this example shows why tenants who pay spring cash rent could request a slight reduction for this reason.

Under a crop share arrangement, rent is paid only when the crop is sold. Depending on quotas, weather and price movement, no rent may be paid until the following spring. If the crop is sold on February 1, the owner foregoes 0.67% interest per month (8% ÷ 12) until payment is received. From May 1 to February 1, this would total 6%. If expected crop share rent is $74 per hectare ($30 per acre) interest foregone is $4.45 per hectare ($1.80 per acre). The cash rent equivalent payable on May 1 would be: $74 – $4.45 = $69.55 per hectare ($30 – $1.80 = $28.20 per acre.

Risk

Under a crop share agreement, the landowner fully shares price and yield risk. Because this income risk is much larger than under a cash rental agreement, the landowner may accept a lower cash rental per hectare (or acre). How much lower the owner is prepared to go depends on variables such as the owner's view of the tenant's competence and the cropping program.

In the previous example, revenues are estimated to be $126 per acre. If a 10% cushion for risk is required (assuming one crop failure in 10 years), then 3% (1/3 of 10%) would be deducted from the landlord's one-third share of the crop. The landowner should be willing to take a lower cash rent since he or she would have no risk.

Tenants who pay a spring cash rent may request this lower rental since owners receive their full rent immediately.

Operating Expenses

Many crop share agreements allow the owner to pay part of the fertilizer and chemical expenses. If owners contribute to operating expenses, they will use their own cash or take out an operating loan. As a result, they lose money by paying interest or foregoing interest. They should include an allowance for interest recovery in the cost structure, just as the tenant does — unless the input expenses are deducted from the crop share at the time of sale and are not actual cash outlays.

Comparison

When comparing a traditional 1/3:2/3 crop share agreement to a cash rent agreement, all risk factors, lost interest and operating expenses must be considered. The expected crop share rent is adjusted by these factors to determine an equivalent cash rent.

Example:

Comparing Traditional Crop Share to Cash Rent

Assumptions:	**Per Hectare**	**(Per Acre)**
Total Income	$311.22	($126.00)
Total Input Costs	$ 88.92	($ 36.00)
Starting point:		
Owner income (1/3 of total income)	$103.74	($42.00)
less: Owner share of input costs (1/3 of total input costs)	$ 29.64	($12.00)
Net crop share rent	$ 74.10	($30.00)
less: Adjustment for risk 10% risk adjustment (1 crop failure in 10 years) (10% × net crop share rent)	$ 7.41	($ 3.00)
less: Adjustment for interest on delayed payment (interest rate = 9 months @ 0.67%/mo.) (owner income × 6%)	$ 6.22	($ 2.52)
less: Adjustment for operating interest (interest rate = 9 months @ 0.67%/mo.) (owner share of input costs × 6%)	$ 1.78	($ .72)
Net crop share rent converted to cash rent basis	$ 58.69	($23.76)
Percent Income		
Crop share rent basis (net crop share rent ÷ total income)	24%	(24%)
Cash rent basis (Net rent ÷ total income)	19%	(19%)

Compared to total income per acre, the cash rent in this example is 5% smaller than the crop share agreement (24% – 19%). Potentially, a crop share arrangement can return more to the landlord willing to wait and share in a few good crops.

Terms and Conditions

In addition to the points listed for all leases, a cash lease should include the following:

- Date(s) on which the rent is due and payable. The rental payment can be made according to any schedule agreed upon by landlord and tenant. Examples of two alternatives are:

a) Rent is payable in full by April 1 for each year of the agreements, or

b) Part of the rent is payable by April 1 and the balance by December 1 for each year of the agreement.

- If rent is in arrears, the landlord should be given the right to repossess and occupy the rented land. In addition, he or she may use any other legal means (e.g. seizure of crop, grain or chattels), to collect the rent. In any case, a landlord should seek legal advice before taking any action.
- Where desired, a flexible rent formula should be clearly outlined in the written agreement.

Sample Cash Lease Agreement

This lease made in duplicate this _____ day of _____ A.D. 19 _____ .

BETWEEN:

_____
(Landlord's name)

of _____ , _____
(address) (occupation)

in the Province of Manitoba, hereinafter called the "landlord" being the registered owner or the purchaser under an Agreement for Sale of land described below.

- and -

_____
(tenant's name)

of _____
(address)

in the Province of Manitoba, hereinafter called the "tenant".

1. WITNESS that in consideration of the rents, covenants, promises and agreements contained in this lease on the part of the tenant to be paid, observed and performed, the landlord DOES HEREBY LEASE TO the tenant the following farm lands and premises situated in the Province of Manitoba, that is to say:

   LAND: (legal description)

   _____

   _____

   _____

   _____

   _____

2. TERM:

   This lease shall continue in force on the said land and premises for and during the term of _____ years from the _____ day of _____ (month)

   A.D. 19 _____ , to the _____ day of _____ (month), A.D. 19 _____ .

3. RENTAL:

   The tenant will pay to the landlord the yearly rent of $ _____ for the use of the said land during the said term: (delete clauses which do not apply)

   (a) to be paid in full on or before _____ for each year of this agreement.

   (b) to be paid _____ (1/2, 1/3, etc.) on or before _____ and the balance on or before _____ for each year of this agreement.

(c) to be paid as follows:

_____

_____

_____

IT IS FURTHER AGREED BY THE LANDLORD AND TENANT AS FOLLOWS, THAT IS TO SAY:

4. The tenant shall make all decisions with respect to farming the said land unless stated otherwise in this agreement.

5. The tenant shall be responsible for all farming costs of the said land unless stated otherwise in this agreement.

6. The tenant will cultivate, seed and harvest the said land in a good husbandlike and proper manner and will not impoverish or waste the same and will use the lands and premises for the purpose of a farm only. Fall tillage will include at least one cultivation to a depth of at least 7.62 cm. (3 in.).

7. The tenant has no rights to sand, gravel, or clay, and he/she has no rights whatsoever to valuable stone or other such substances existing on, or under the surface of the said land.

8. The tenant will not change the natural course of any waterways on the said land, or cut down trees growing upon the land, nor will he permit any other person to do so, without written consent of the landlord.

9. If the tenant fulfills the terms and conditions of this agreement he/she shall and may peaceably possess and enjoy the said land for the said term, without any interruption or disturbance from the landlord or any representative of the landlord.

10. The landlord or a representative of the landlord has the right at all reasonable times to attend and inspect the said property. The landlord reserves the right of entry and exit over and upon the land in this agreement and to use any land and buildings expressly excluded from this agreement.

11. If either party shall fail, in any respect, to carry out any of the provisions of this lease agreement, the other may have the same done, and the costs shall be paid by the party failing to carry out the said provisions.

12. GOVERNMENT PAYMENTS AND SUBSIDIES:
In the event that any payment, subsidy, or other reimbursement is made under any government agency, or any marketing agency in connection with grain production on the said land during the term of this lease, the payments identified with the leased land shall be paid to the tenant unless otherwise agreed upon.

13. COMPENSATION:
Any compensation for property damage shall accrue to the part which has suffered the loss.

14. TAXES:
Unless otherwise agreed upon, the payment of all taxes on the land indicated in this lease shall be paid by the landlord.

15. IMPROVEMENTS:
The tenant shall not make major improvements, other than what is considered normal repair and maintenance, to the leased land or any other assets identified in this agreement without written permission of the landlord. Major improvements, which without restricting the generality of the term, shall include: water development, erosion control, fencing and building construction, clearing, breaking, seeding pasture and hayland. Such consent shall be attached to and form part of the lease agreement. The amount of compensation shall be an amount agreed upon by the landlord and tenant.

Title to all improvements shall vest in the landlord and no improvements shall be sold, removed, disposed of, or encumbered without the written consent of the landlord.

16. INSURANCE:
Insurance on all leased buildings in this agreement shall be the responsibility of the landlord.

The tenant is free to make his/her own arrangements regarding crop insurance and hail insurance and, in so doing shall absorb the total coverage cost and receive all benefits.

17. SUBLETTING:
The tenant shall not sublet, or assign this lease, or any part thereof, or any interest therein without obtaining the landlord's written consent to the sublease or assignment.

18. RENEWAL:
The term of this lease may be extended by mutual agreement between the landlord and the tenant, for a further period upon the same terms and conditions as contained herein, except as otherwise agreed in writing by the parties executing a renewal statement. This agreement will override any sales of the above property listed, unless mutually agreed upon, until the end of this agreement.

19. DEFAULT IN PAYMENTS:
When the tenant does not make rent payment in accordance with the terms and conditions of this lease agreement, the current year's rental and any further payments owing for that year shall become due and payable immediately, and the landlord may again repossess and enjoy the said land as if this agreement had not been executed.

20. ARBITRATION:
Any disagreement which may arise between the contracting parties hereto shall, when a mutually satisfactory settlement cannot be reached, be submitted to arbitration. The arbitration authority may either be a single person mutually satisfactory to both parties, or a board of three, one member to be named by each party and a third selected by the two so chosen.

The recommendation of the arbiter or arbitration board shall be accepted as final.

21. The contents of this agreement shall, for all purposes, be construed according to the laws of the Province of Manitoba.

22. The terms "landlord" and "tenant" shall include their heirs, executors, administrators, successors and approved assigns in the singular or plural number, and feminine and masculine gender, when the context or the parties so require, and all the covenants shall be construed as being joint and several.

IN WITNESS WHEREOF the said parties hereto have hereunder set their hands.

Dated this _____ day of _____, A.D. _____.

_____ (Witness)	_____ (Landlord)	Affix Seal Here
_____ (Witness)	_____ (Landlord)	Affix Seal Here
_____ (Witness)	_____ (Tenant)	Affix Seal Here
_____ (Witness)	_____ (Tenant)	Affix Seal Here

NOTE: If a spouse has a Dower Interest, THE DOWER ACT (CONSENT OF SPOUSE) sample form page 68, is inserted here.

Flexible Cash Lease

Flexible cash leases combine features of both cash lease and crop share lease. Because rental rates vary with grain prices, the landlord shares the risk of changing prices. When grain prices fluctuate widely, flexible cash leases are an appropriate way to share the risk while keeping administration simple.

Administration

Flexible rental rates based on grain prices can be administered in two ways:

- The tenant delivers an agreed quantity and grade of grain (e.g. 800 bushels of No. 2 C.W. wheat for a quarter section of land) to an elevator in the landord's name. A cash purchase ticket is issued to the landlord and he or she receives any adjustment, interim and final payments, directly from the Canadian Wheat Board.
- The tenant pays cash rent to a landlord, based upon a specified quantity and grade of crop agreed to by both landlord and tenant, for each hectare (acre) of land to be leased.

  Cash rent is determined by multiplying the agreed-to quantity of grain by the price of grain. If the grain was sold on the open market, the parties could agree beforehand to a date on which the price would be set (e.g. street price on October 15 of each year).

  If the grain was marketed through the Canadian Wheat Board, the tenant could pay a cash amount to the landlord each time the Canadian Wheat Board announced an initial, adjustment, interim or final payment for the grade of grain called for in the lease.

  The landlord may require the tenant to make an advance spring payment before the crop is seeded. This would be applied towards the fall payment when the initial price is known or the street price can be determined.

Advantages of Flexible Cash Leases:

- Compared to a crop share lease, the tenant has greater independence in decision making. He or she may grow any crops and use them in any manner he or she wishes.
- The risk of changes in grain prices is shared by the landlord and tenant.
- The tenant captures all the benefits of superior management.
- There is less administration compared to a crop share lease, but more than a cash lease.
- The landlord's rent is guaranteed in relation to quantity, but not grain price.
- The tenant may make full contribution on grain sales to the Western Grain Stabilization Plan.
- Longer term leasing arrangements without periodic renegotiation of price. Allows better farming practices to be adopted by the tenant.

Disadvantages of Flexible Cash Leases:

- All risks of crop production are assumed by the tenant.
- The landlord has less influence on the tenant's management.

The Amount of Flexible Cash Rent

In a flexible cash lease, the grade and quality of grain should relate to normal crop production on the leased land, normal grades of grain and the normal share that a landlord would receive in a crop share lease. The share arrangement could either be the traditional 1/3 crop share, or a crop share based on the cost contributions of the landlord and tenant.

A tenant may grow any crop or combination of crops, but one commonly grown crop should be used to base rent calculations.

Since the tenant bears the risk of low yields, rent is adjusted downward to compensate for production risk. As in the cash lease, the crop share approach is used to calculate rent. A projected crop can then be used to determine the profitability of the arrangement.

Crop Share Approach: (based on a 27:73 Crop Share Ratio) — Metric Calculation

Crops Used to Determine Rent (common crop in area) — **Wheat** Grade — **2 C.W.** Delivery Point — **Elevator**

$$\text{Avg. Yield per Ha (Y) (based on crop rotation)} = \frac{\text{Expected Gross Returns Per Ha (J) (page 12)}}{\text{Estimated Price of Crop per Tonne (page 12)}} = \frac{\$311.17}{\$110.23} = 2.8 \text{ t/ha}$$

Landlord's Share (C) = 27%

Discount for Risk (D) = 10%
(based on 1 crop failure in 10 years)

Adjustment for Risk (R) = C×D = 27% × 10% = 2.7 or 3%

Landlord's Adjusted Share (S) = C−R = 27% − 3% = 24%

Base Annual Rent per Hectare (L) = S×Y = 24% × 2.8 t/ha = .67 t/ha

Cash Rent per Hectare (M) =
L × Actual Price/tonne = .67 t/ha x $110.23/t = $73.85

Total Cash Rent for Crop Year =
M×G (page 24) = $73.85/ha × 260 ha = $19,200

NOTE: Any discrepancies are due to rounding.

Crop Share Approach: (based on a 27:73 Crop Share Ratio) — Imperial Calculation

Crops Used to Determine Rent (common crop in area) — **Wheat** Grade — **2 C.W.** Delivery Point — **Elevator**

Avg. Yield per Acre (Y) (based on crop rotation) = $\frac{\text{Expected Gross Returns Per Acre (J) (Page 12)}}{\text{Estimated Price of Crop per bushel (page 12)}} = \frac{\$126.00}{\$3.00} = 42$ bu./acre

Landlord's Share (C) = 27%

Discount for Risk (D) = 10%
(based on 1 crop failure in 10 years)

Adjustment for Risk (R) = C×D = 27% × 10% = 2.7 or 3%

Landlord's Adjusted Share (S) = C−R = 27% − 3% = 24%

Base Annual Rent per Acre (L) =
S×Y = 24% × 42 bu./acre = 10 bu./acre

Cash Rent per Acre (M) =
L × Actual Price/bushel = 10 bu./acre x $3.00/bushel = $30

Total Cash Rent for Crop Year =
M×G (page 24) = $30/acre × 640 acres = $19,200

NOTE: Any discrepancies are due to rounding.

This procedure illustrates how cash rent can be easily modified to accommodate the yearly grain price fluctuations. The flexible cash lease agreement will specify the method of determining the price to be used in calculating rent.

Other types of flexible cash lease agreements may account for variations in both grain prices and crop yields. However, these agreements are more complex; a crop share lease would be the better type to use.

Considerations in Establishing Prices

If Canadian Wheat Board prices are used, the grain type, grade and delivery point must be specified. If feed grain prices are used, apply an average price for 30 days prior to the rent payment. Alternatively, the price of specified type and grade of grain, on the day of payment, can be used.

The type and grade of crop chosen to calculate the rent should reflect typical crops and grades of grain grown on the rented land. Also, the agreement should specify when the rent will be made.

Terms and Conditions

A flexible cash lease should include the following:

- Dates when rent is payable and the method of calculating rent.
- The delivery point for determining prices or where the landlord's grain is to be delivered.
- Rights of the landlord to recover any rent in arrears.

If the tenant fails to make the payments according to the schedule outlined in the agreement, the landlord should be given the right to repossess and occupy the rented land. The landlord should also be given the right to use any other legal means (e.g. seizure of crop, grain or chattels) to collect the rent. Before any action is taken, legal advice should be obtained.

Sample Flexible Cash Lease Agreement

This lease made in duplicate this _____ day of _____ A.D. 19 _____.

BETWEEN:

_____
(landlord's name)

of _____ (address), _____ (occupation)

in the Province of Manitoba, hereinafter called the "landlord" being the registered owner or the purchaser under an Agreement for Sale of land described below.

— and —

_____
(tenant's name)

of _____
(address)

in the Province of Manitoba, hereinafter called the "tenant".

1. WITNESS that in consideration of the rents, covenants, promises and agreements contained in this lease on the part of the tenant to be paid, observed and performed, the landlord DOES HEREBY LEASE TO the tenant the following farm lands and premises situated in the Province of Manitoba, that is to say:

   LAND: (legal description)

   _____

   _____

   _____

   _____

   _____

   _____

   Together with the following portable buildings, namely:

   PORTABLE BUILDINGS:

   _____

   _____

   EXCEPTING AND RESERVING unto the landlord the following lands and buildings, namely:

   LANDS RESERVED:

   _____

   _____

BUILDINGS RESERVED:

_____

_____

2. **TERM:**

This lease shall continue in force on the said land and premises for and during the term of _____ years from the _____ day of _____ (month) A.D. 19 _____, to the _____ day of _____ (month) A.D. 19 _____.

Any overholding by the tenant shall be considered a trespass.

3. **RENTAL:**

The tenant will pay to the landlord the yearly rental equivalent to the total value of all initial, adjustment, interim, and final payments payable to a producer on _____

tonnes (bushels) of _____ (grade) (grain)

delivered at _____ (location), in the Province of Manitoba.

Payment of the rental will be made as follows: (delete clauses which do not apply)

(a) For each year of the agreement, $ _____ payable on or before _____ and the balance payable within thirty (30) days after mailing of the final payment to producers has commenced.

(b) For each year of the agreement, $ _____ payable on or before _____ with a further $ _____ payable on or before _____ and the balance payable within thirty (30) days after mailing of the final payment to producers has commenced.

(c) For each year of the agreement, _____ (1/2, 1/3 etc.) the initial payment for the grain specified herein payable on _____ with the balance payable within thirty (30) days after mailing of the final payment to producers has commenced.

(d) _____

_____

_____

_____

IT IS FURTHER AGREED BY THE LANDLORD AND TENANT AS FOLLOWS, THAT IS TO SAY:

4. The tenant shall make all decisions with respect to farming the said land unless stated otherwise in this agreement.

5. The tenant shall be responsible for all farming costs of the said land unless stated otherwise in this agreement.

6. The tenant will cultivate, seed and harvest the said land in a good husbandlike and proper manner and will not impoverish or waste the same and will use the lands and premises for the purpose of a farm only.

7. The tenant has no rights to sand, gravel, or clay, except for his own use, and he/she has no rights whatsoever to valuable stone or other such substances existing on, or under the surface of the said land.

8. The tenant will not change the natural course of any waterways on the said land, or cut down trees growing upon the land, nor will he/she permit any other person to do so, without the written consent of the landlord.

9. If the tenant fulfills the terms and conditions of this agreement, he/she shall and may peaceably possess and enjoy the said land for the said term without any interruption or disturbance from the landlord or any representative of the landlord.

10. The landlord or a representative of the landlord has the right at all reasonable times to attend and inspect the said property. The landlord reserves the right of entry and exit over and upon the land in this agreement and to use any land and buildings expressly excluded from this agreement.

11. If either party shall fail in any respect to carry out any of the provisions of this lease agreement, the other may have the same done, and the costs shall be paid by the party failing to carry out the said provisions.

12. STORAGE OF GRAIN:

The landlord in this agreement will provide _____ tonnes (bushels) of grain storage. If additional grain storage is required, this will be provided by the tenant. In the event that storage facilities do not permit the storage of grain on the land in this agreement, the tenant may remove the said grain to another location for the purpose of storage.

13. GOVERNMENT PAYMENTS AND SUBSIDIES:

In the event that any payment, subsidy, or other reimbursement is made under any government agency, or any marketing agency in connection with grain production on the said land during the term of this lease, the payments identified with the leased land shall be paid to the tenant unless otherwise agreed upon.

14. COMPENSATION:

Any compensation for property damage shall accrue to the party which has suffered the loss.

15. TAXES:

Unless otherwise agreed upon, the payment of all taxes on the land indicated in this lease shall be paid by the landlord.

16. IMPROVEMENTS:

The tenant shall not make major improvements, other than what is considered normal repair and maintenance, to the leased land or any other asset identified in this agreement, without written permission of the landlord. Major improvements, which without restricting the generality of the term, shall include: water development, erosion control, fencing and building construction, clearing, breaking, and seeding to pasture and hayland. Such consent shall be attached to and form part of the lease agreement. The amount of compensation shall be an amount agreed upon by the landlord and tenant.

Title to all improvements shall vest in the landlord and no improvements shall be sold, removed, disposed of, or encumbered without the written consent of the landlord.

17. REPAIR OF BUILDINGS, FENCES, AND IMPROVEMENTS:

Responsibility for normal maintenance and repair to buildings, fences, and improvements shall be as follows:

Tenant's Responsibility (list items):

_____

_____

_____

_____

Landlord's Responsibility (list items):

_____

_____

_____

_____

18. INSURANCE:

Insurance on all leased buildings in this agreement shall be the responsibility of the landlord.

The tenant is free to make his/her own arrangements regarding crop insurance and hail insurance and in so doing shall absorb the total cost of coverage and receive all the benefits.

19. SUBLETTING:

The tenant shall not sublet, or assign this lease, or any part thereof, or any interest therein without obtaining the written consent of the landlord to the sublease or assignment.

20. GRAIN STORED ON LAND AT COMMENCEMENT OF LEASE:

In the event that marketing facilities prevent the landlord from delivering the grain previously grown and stored on the said leased premises at the commencement of this lease, it is agreed that such undelivered grain, may be

stored on the said land for a period not exceeding _____ months after the commencement of this lease without charge for storage or interference from the tenant. However, the landlord must not deliver any other grain in priority to the grain stored on the leased premises. During this period the landlord has the right of entry to obtain any grain or fodder which he/she has stored on the said property.

21. GRAIN REMAINING ON LAND AT TERMINATION OF LEASE:

In the event harvesting and marketing conditions prevent the tenant from delivering the grain grown and stored on the leased land during the term of this lease, such grain may be harvested and removed from the landlord's property. Harvesting must be completed by May 15 and removal of stored grain completed by June 30 following the termination date of the lease agreement.

22. RENEWAL:

The term of this lease may be extended by mutual agreement between the landlord and tenant for a further period upon the same terms and conditions as contained herein, except as otherwise agreed in writing by the parties executing a renewal statement.

23. INCOMING TENANT:

An incoming tenant, purchaser, or landlord shall have the right to enter the land contained in this agreement after harvest, in the fall preceding the expiration of the said term for the purpose for preparing the land for crop.

24. DEFAULT IN PAYMENTS:

When the tenant does not make rental payment in accordance with the terms and conditions of this lease agreement, the current year's rental and any further payments owing for that year shall become due and payable immediately, and the landlord may again repossess and enjoy the said land as if this agreement had not been executed.

When rent is in arrears, the landlord or a person authorized in writing by the landlord may enter upon the rented land and seize any goods, chattels and crop whether standing or harvested, for the rent or any amount in arrears and may sell the same. The landlord may use any other means under the law of recovering any rent payable under this agreement.

25. ARBITRATION:

Any disagreement which may arise between the contracting parties hereto shall, when a mutually satisfactory settlement cannot be reached, be submitted to arbitration. The arbitration authority may either be a single person mutually satisfactory to both parties, or a board of three, one member to be named by each party and a third selected by the two so chosen.

The recommendation of the arbiter or arbitration board shall be accepted as final.

26. The contents of this agreement shall for all purposes be construed according to the laws of the Province of Manitoba.

27. The terms "landlord" and "tenant" shall include their heirs, executors, administrators, successors and approved assigns in the singular or plural number and feminine and masculine gender when the context or the parties so require, and all the covenants shall be construed as being joint and several.

IN WITNESS WHEREOF the said parties hereto have hereunder set their hands and seals.

Dated this _____ day of _____, A.D. 19 _____.

_____ (Witness)	_____ (Landlord)	Affix Seal Here
_____ (Witness)	_____ (Landlord)	Affix Seal Here
_____ (Witness)	_____ (Tenant)	Affix Seal Here
_____ (Witness)	_____ (Tenant)	Affix Seal Here

NOTE: If a spouse has a Dower Interest, THE DOWER ACT (CONSENT OF SPOUSE) sample form page 68, is inserted here.

Other Types of Rental Agreements

Pasture Leases on Privately Owned Land

Pasture lease rates are established by negotiation between landlords and tenants with consideration to type of forage, its condition and carrying capacity.

Guidelines used to estimate pasture rents include:

1. ***Cost Approach***
   The landlord's costs in owning pasture land are used to calculate the rental rate. These costs include interest on investment, depreciation, property taxes, insurance and the costs to establish and break the forage crop (for tame forages only).

Example:

1/2 section seeded pasture:	$40,000 value
Property Taxes:	$400 (year)
Fencing: 5.6 km × $1500/km (3.5 miles × $2,400/mile) =	$8,400 value
Water Supply: (Dugout)	$2,500 value
Breaking, Seeding and Regrassing Costs:	$135.85/hectare ($55.00/acre)
Life of Pasture:	10 years
Stocking Rate: (70 head for 5 months)	350 cow months

Land Costs:	Interest on Investment $40,000 × 4% =	$1600
	Property Taxes	400
Fencing Costs:	Interest on Average Investment $\frac{\$8,400}{2} \times 12\%$	504
	Depreciation $8,400 × 5%	420
	Repair Allowance $8,400 × 2%	168
Water Costs:	Interest on Average Investment $\frac{\$2,500}{2} \times 12\%$	150
	Depreciation $2,500 × 5%	125

Breaking, Seeding and Regrassing Costs:	$\frac{\$135.85/\text{hectares} \times 129.55 \text{ hectares}}{10 \text{ years}}$	
	$\frac{(\$55.00/\text{acre} \times 320 \text{ acres})}{(10 \text{ years})}$	1,760
	Total Annual Costs	**$5,127**

Pasture Cost Summary:

Cost Per Cow Month	$\frac{\$5,127}{350} =$	$14.65
Cost Per Cow Per Grazing Season (5 months)	$\frac{\$5,127}{70} =$	$73.24
Cost Per Hectare	$\frac{\$5,127}{129.55} =$	$39.58
(Cost Per Acre)	$\frac{(\$5,127)}{(320)} =$	($16.02)

2. ***Contributions Approach***

Based on the value of calves, the contributions approach can be used to establish a flexible rent. The cost contributions of the producer and landlord, are used to determine an equitable share in the value of calves to compensate the landlord for his or her pasture.

The following example illustrates this procedure:

Contributions Approach to Establish Flexible Rent Based on Calf Value.

Pasture Owner's Costs:	
Pasture (see previous example)	$73/cow
Cow-Calf Producer's Costs:	
Winter Feed	$115/cow
Bedding	15
Veterinary & Medicine	15
Salt, Minerals, and Vitamins	12
Breeding Costs	20
Building and Facilities	40
Death Loss (2%)	13
Cow Replacement $\frac{\$750-550}{5 \text{ years}}$	40
Cow Interest $\frac{750 + 550}{2} \times 12\%$	78
Interest On Operating Capital	15
Trucking and Marketing	15
Labour and Management Allowance	75
	$453

Total Contributions = $73 + $453 = $526

Pasture Owner's Share = $\frac{\$\ 73}{\$526} \times 100\% = 14\%$

Cow-Calf Producer's Share = $\frac{\$453}{\$526} \times 100\% = 86\%$

Approximately 14% of the total cow-calf production costs, in this example, relate to pasture. Therefore, the pasture owner would be entitled to 14% of the value of calves produced each year.

The pasture rent per cow (per grazing season) could be calculated as follows:

Rent Per Cow Season =	Pasture Owner's Percentage Contribution ×	Average Calf Weight ×	Average Calf Crop ×	Average Calf Prices

If the pasture owner's percentage contribution was 14%, average calf weight was 182.2 kg. (450 lbs.), average calf crop was 90% and average calf price was $2.22/kg. ($0.90/lb.), then the rent/cow season would be calculated as follows:

Rent/Cow Season

14% × 182.2 kg. × 90% × $2.22/kg.
(14% × 450 lb. × 90% × $0.90/lb.) = **$50.97 * (both)**

* discrepancies due to rounding

A simpler approach is to set the rent per cow season as a percentage of the average price of calves quoted in dollars per hundredweight ($/cwt). Fifty-seven percent (57%) of the calf price in $/cwt. would give approximately the same result as the above formula. The following table shows the rent per cow season over a range of calf prices.

Calf Price ($/cwt.)	Rent/Cow Season (57% of calf prices)
$ 50.00	$29.00
$ 60.00	$34.00
$ 80.00	$45.00
$ 90.00	$51.00
$100.00	$57.00

In the fall, rental payments could be based on calf prices averaged over several weeks or based on a definite date. A partial rental payment could be made in spring before grazing commences with a fall final payment after calf prices are determined.

Pasture rental rates based on calf prices facilitates longer term leases, because rental rates automatically adjust with market conditions.

Different Approaches

Using the income approach, the tenant estimates the income earned from the pasture, and subtracts production costs from that amount. This leaves a residual amount which can be paid for pasture.

Example:

Cow Calf Enterprise

Expected Income/Cow:
182.2 kg. calves × 90% calf crop × $2.22
(450 lb. calves × 90% calf crop × $0.90/cwt) = $364 *

Less: Expected Costs for One Year (except pasture) 453

Residual Value for Pasture **$ 0**

* discrepancies due to rounding

In this example, the income approach leaves a zero residual return to the pasture.

Pasture Lease Agreement

The following should be included in a pasture lease agreement, in addition to clauses applying to all leases:

- Date of rental payment.
- Method of calculating rental payment if a flexible rental arrangement is used.
- Permitted grazing period and other limitations on grazing.
- Number of livestock permitted on the land.
- Rights of tenant to cut hay.
- Responsibility for fertilization, rejuvenation, rebreaking and seeding.

Hay Leases on Privately Owned Land

Farmers often purchase standing hay from landowners. The settlement may be made to the landowner as a rent per hectare (acre), a rent per tonne (ton) or the landlord may receive a share of the hay harvested. The settlement should relate to the hay quality, size of the fields, yield per hectare (acre) and field conditions. Local market conditions are the primary factor which determine values.

The contributions approach, the cost approach and the income approach are procedures used as guidelines to determine share or value for standing hay.

The following example illustrates these three approaches:

Income Approach

Landlord's Costs	**$/hectare**	**$/acre**
Interest on Land Investment (@ 4% of $741./ha or $300./acre)	$29.64	($12.00)
Property Taxes	$ 4.94	($ 2.00)
Seed, Breaking and Reseeding $135.85/ha / 6 years or ($55.00/acre) / 6 years	$22.64	($ 9.16)
Total Landlord's Costs	**$57.22**	**($23.16)**

Hay Purchaser's Costs	**$/hectare**	**$/acre**
Based on 2.8 tonnes/hectare (1.25 tons/acre) cutting, conditioning, baling and hauling (custom rates less profit margin) $33.08/tonne × 2.8 tonnes/hectare ($30.00/ton × 1.25 tons/acre)	$ 92.62	($37.50)
Twine 1.321 tonnes × 2.8 tonnes/hectare or ($1.20/ton × 1.25 tons/acre)	$ 3.70	$ 1.50
Total Hay Purchaser's Costs	**$ 96.32**	**($39.00)**
TOTAL CONTRIBUTIONS	**$153.54**	**($62.16)**

Landlord's Share		
Landlord's Costs/Total Contributions 57.22/153.54 × 100% (23.16/62.16 × 100%)	**37%**	**(37%)**
Hay Purchaser's Share		
Purchaser's Costs/Total Contributions 96.32/153.54 × 100% (39.00/62.16 × 100%)	**63%**	**(63%)**

Contributions Approach

With the contributions approach a 37:63% division would be appropriate. The hay purchaser could supply 37% of hay to the landlord or pay cash equal to 37% of the value of the hay. For example, if hay was valued at $54.42/tonne ($60/ton) the landlord would receive $20.14/tonne ($22.20/ton) 37% × $54.82 (37% × $60.00).

Cost Approach

Using the cost approach, the landlord would have to charge $57.22 per hectare ($23.16 per acre) or $20.44/tonne ($18.52 per ton) [$57.22 ÷ 2.8 tonnes/hectare ($23.16/1.25 tons/acre)] to cover fixed and variable costs.

Income Approach

In the income approach, the hay purchaser subtracts his or her total costs to harvest the hay from the value of the hay leaving a residual value. For example, if hay was valued at $54.42 per tonne or $60.00 per ton and the hay purchaser's costs were $34.40/tonne ($96.32/2.8) or $31.20/ton ($39.00/1.25), then he or she could afford to pay $31.75/tonne ($66.15 – 34.40) or $28.80/ton ($60.00 – $31.20) to the landlord for hay.

The value of silage could be determined using the same methods after adjustments for moisture content.

Custom Farming Agreements

Alternative to Leasing

Even though he or she may not be active in the farm operation, a landlord may want to remain classified as a farmer under government listings. A custom farming agreement may accomplish this goal.

Only the farmer, not a landlord, is able to make contributions to the Western Grain Stabilization Plan and to the Canadian Pension Plan on earnings from the farm business.

The custom operator in a custom farming agreement does not have the same rights as a tenant in a land leasing agreement. A custom farming agreement is not an interest in land. Consequently, a caveat can not be placed against the owner's title to protect the custom operator's interest, or to warn third parties of its existence. If the owner sold the land covered by a custom farming agreement to an unaware third party, the custom operator would have to sue the original owner for contractual damages; the right to continue farming the land ends.

Preservation of Capital Gain Rollover Provision and Capital Gains Exemption.

Land may be rolled over on a tax deferred basis when it is transferred from a parent to a child, providing the child is a resident of Canada and the land is "used in the business of farming" by the parent, spouse or any children immediately prior to the transfer. Land which is leased to anyone other than a spouse or child would not qualify for a rollover.

To be eligible for the immediate $500,000 capital gains exemption on farmland, the land must be "qualified farm property". Such property includes: (1) farmland, farm buildings and production quotas held by an individual under conditions where the individual, his or her spouse or child are at present using the property in the farm business, or (2) the above property must be farmed for at least five years (since 1971) by the individual farmer, spouse or child. If the property is purchased after June 17, 1987, it must be owned and farmed by the farmer, his or her spouse or child for at least two years before it is sold. If you don't meet the above criteria, consider a custom farming agreement. The capital gains exemption for all property other than qualified farm property or shares in a Canadian small business is $100,000.

In a properly structured custom farming agreement, land will be considered to be "used in the business of farming", as opposed to being a rental property as in a lease agreement. Revenue Canada has allowed a farm owner to engage the services of another person for virtually all work associated with farming activities (custom working). However, the farm property owner must assume some risk and provide the management for the operation.

To be at risk, the farm owner should pay some of the operating costs and stand to lose money if there was a crop failure. His or her management decisions should be responsible for such functions as determining crops and varieties to be grown, fields to be seeded and fallowed, timing of field operations, inputs to be used and dates of crop sales.

It is important for the landowner and custom operator to build a good working relationship as set out in the custom farming agreement. Revenue Canada will look at the actual relationship and not the agreement, should any discrepancies between the agreement and the facts of the situation occur.

The best way to show proper decision-making procedures under custom farming regulations is for landowners to document their decision making responsibilities, by making copies of instructions or meeting minutes.

Types of Custom Farming Agreements

Although there are many variations to custom farming agreements, there are only three general types:

Custom Hiring Agreement

In a custom hiring agreement, the landowner (farmer) makes all farming decisions, arranges and pays for all inputs, and receives all grain income. Both landowner and custom operator agree that all machine operations be performed by the custom operator. Upon completion of each machine operation, the landowner agrees to pay a custom fee to the custom operator.

One variation is for the landowner to pay the custom operator a basic lump fee by a certain date say, July 31, of each year plus a bonus after the final accounting is completed for the year. The bonus could be a percentage, say 50% of "net income". "Net income" would be the value of all crop sales attributed to the year minus the costs of custom work, seed, fertilizer, chemicals and property taxes. The bonus percentage amount should depend on the size of the basic lump sum fee in relation to custom rates in the area.

Joint Farming Venture Agreement

In this agreement, both parties are considered farmers. The landowner supplies land to the joint venture; the other party supplies machinery, machinery operating costs and labour.

The two parties then share the crop sales on a percentage basis, say 50:50. They also share the input costs (seed, fertilizer, chemicals, crop insurance and property taxes) on the same basis.

Farm Partnership Agreement

This agreement is similar to a joint venture agreement, except a partnership is established with more defined rules.

Some custom farm agreements have been drafted in a manner to provide the same financial results as a crop share lease. A common agreement is one where the landowner (the "farmer") takes out a Canadian Wheat Board permit book in his or her name. All the crop is sold in the "farmer's" name. After each grain sale or CWB payment is received, the "farmer" pays cash equal to, say, two-thirds of the income received to the custom operator. The custom operator supplies seed, fertilizer, chemicals, machinery, labour and pays machinery operating costs.

In this case, the Farm Partnership Agreement is the same as a crop share lease. Because Revenue Canada is likely to view these agreements as leases, a landowner would not qualify for a capital gain rollover to his or her child (or a rollover on a property exchange).

Consult a lawyer, accountant or farm management specialist before entering into any custom farming agreement since some agreements may not meet Revenue Canada's "used in the business of farming" criteria.

Review your previous custom farming agreements to determine if they meet current requirements.

V. LAND LEASES AND INCOME TAX

The following Income Tax Act information outlines the major provisions regarding the leasing of farmland. It should not be considered as either an interpretation or a complete description of the Act. Specific problems should be discussed with your farm management specialist, accountant, tax consultant or lawyer. Revenue Canada also provides information on the interpretations of the Income Tax Act.

Income and Expenses

The "Farmer's Income Tax Guide" indicates income and expenses which may be claimed by the farmer (tenant) and landlord. For example, cash rental payments are income to the landlord and a tenant's deductible expense. Crop share payments are the landlord's income but are not a deductible expense for the tenant, unless reported in the total gross income from the rented property. The tenant may claim a deduction for repair costs and a capital cost allowance on improvements which he or she has made to the landlord's property.

Non-Resident Withholding Tax

If the landlord is a non-resident of Canada and resides in the U.S.A., the tenant must withhold 15% of the rent (cash rental or crop share) and send it to Revenue Canada. A common practice with crop share lease agreements is to have a separate bank account in the name of the landlord. The tenant deposits the landlord's share of crop in the account with the provision that the bank will remit 15% to Revenue Canada. When the tenant does not remit the 15% withholding tax, Revenue Canada will attempt to collect the tax from the landlord. If the landlord does not pay this tax, the tenant will be held responsible.

The withholding tax may be up to 25% for non-residents residing in countries other than the U.S.A. Check with an accountant or Revenue Canada for rates applying to other countries.

An individual who remits the withholding tax must complete and forward an NR4 return to Revenue Canada at the end of the year.

Capital Cost Allowance

When a landlord rents his or her farm or machinery, the Income Tax Act requires that he or she switch from the Straight Line Method of capital cost allowance (CCA) to the Declining Balance Method. Since most of the machinery and equipment is under the declining balance method, there would be very little recaptured capital cost allowance when the straight line CCA class is closed out.

If improvements to the rented property are made at the tenant's own expense, he or she is entitled to claim a CCA on the depreciable improvements over the

duration of the lease. Improvements generally include major alterations to the existing structures or construction of dugouts, dams, fences and corrals, permanent grain storage and livestock buildings.

It is important for the tenant to receive fair compensation as reduced rent or cash payment since the improvements belong to the land and are legally owned by the landlord. If the tenant sells the asset or receives compensation from the landlord, he or she may recapture the capital cost allowance and incur a possible capital gain.

Five Year Block Average

Under tax reform, the five year block average is to be phased out by 1991. In effect, the last five year block available would be 1987-1991.

In a **crop share** arrangement, the landlord (if also a full-time farmer), can elect to do a five year block average for all his or her income providing the net farming income for those five years exceeds non-farm income. In most instances, income arising from non-farm profits are considered farm income. It is recommended the landlord consult an accountant when investment income might influence the landlord's eligibility for a five year block average.

The five year block provision is **not available** to the landlord in a **cash rental** arrangement.

Canada Pension Plan and Registered Retirement Savings Plan.

Rental income earned by a landlord will be included as earnings in calculating his or her maximum allowable RRSP contribution, but will not be included as earnings in calculating any CPP contributions. Farmers who lease their land prior to age 65 should be aware that they will be unable to make contributions to the Canada Pension Plan if they have no employment or self-employment income. The pension received at age 65 could be greatly reduced if there has been little or no contribution to the plan for several years.

Rather than lease land, a landowner may contract out farm work on a custom basis. The net income from a custom farming arrangement is eligible for contributions to the Canada Pension Plan.

Options and First Right of Refusal

A lease agreement may provide a tenant with a right to match any offer-to-purchase the landlord (vendor) receives and would accept. This right is given by landlords that have not yet decided to sell their property, but feel they might in the future. This right is also used as a type of lease renewal. A tenant may have the right to match any rental offer the landlord may receive and would accept at the end of the lease term.

A lease agreement may also provide a tenant with the first chance to buy the property. The rental payments may or may not be applied against the purchase price. If these rental payments are deducted as expenses through the years, they do not become part of the sale price. The option to purchase allows a tenant to:

- match the highest outside bid that the landowner receives, or
- pay the set option price at the beginning of the lease or at anytime during the lease term, or
- pay the set option price at the end of the lease term.

The lease agreement may be deemed to be an agreement for sale if the option price set at the beginning of the lease is substantially lower than the fair market value of the property at the time of purchase. The rental payments will be considered land payments and the tenant will not be allowed to deduct the expenses from his or her income.

Before entering into an agreement, landowners and tenants should consult an accountant, lawyer or farm management specialist to determine the full tax implications of including an option to purchase or right of first refusal in the lease. Consult Revenue Canada for specific rules with respect to lease agreements which include the option to purchase.

Capital Gains Rollover

Providing the land is used for farming by the landowner, his or her spouse, or children, an individual may transfer farmland and depreciable farm property to any of his or her children either during his or her lifetime or after death in a capital gain rollover. Under the legal definition, children include sons-in-law, daughters-in-law, grandchildren and great grandchildren.

Land leased to non-family members will not qualify for the rollover provision and the landowner or the landowner's estate could face serious tax implications. To preserve the capital gain rollover, many landowners will contract out the farm work on a custom basis in a custom farming arrangement such as those described in the section on Custom Farming Arrangements.

Capital Gains Exemption

Qualified farm property is eligible for an immediate $500,000 capital gains exemption and includes:

- farmland, buildings or production quotas held by an individual under conditions where the individual, his or her spouse, child or farm partnership or corporation uses the property in the farming business, or
- any property farmed for at least five years since 1971 by the individual, his or her spouse, child, farm partnership, corporation, or
- property purchased after June 17, 1987 which has been owned and farmed for at least two years by the above related group.

If you don't meet one of the above criteria, the capital gains exemption will be a maximum of $100,000.

Before relying on this exemption to shelter your taxable income, check out the effect of the alternative minimum tax calculation. In circumstances when the proceeds received are not significant, the minimum tax liability will not be triggered.

VI. LAND LEASES AND THE LAW

This section outlines the law pertaining to land leases. However, it is not, and should not be considered as an interpretation or complete coverage of the existing statutes and court case decisions. Consult a lawyer if specific problems arise.

A land lease is a contract by which an owner of property conveys possession of the property to another for a determined period of time (term), in exchange for a consideration (rent). The person who grants the lease is called a lessor and the person to whom it is granted, the lessee.

A lease agreement is like all other contracts in that both parties must be competent to contract. A lease by or to a minor or mentally incompetent person may not be binding. A lawyer should be consulted prior to entering into such a lease.

A lease arrangement may be verbal or written and can be for any specified time period.

Verbal Lease

A verbal lease is enforceable and valid if:

- consideration (rent) has been given to the landlord, or
- the tenant has already taken possession of the property.

The Real Property Act is the only relevant Act in regard to land transactions. It states real property (land) transactions need not be in writing to be valid. Therefore, a verbal lease can be made between the landlord and tenant for any period of time, remaining valid and enforceable.

However, the lease should be in writing to be valid and enforceable when the original landlord dies, or sells, or mortgages the property.

Written Lease

It is important that a written lease state all terms and conditions of the agreement, because verbal promises associated with written agreements may not be binding. To be a legal contract, the lease must also state the beginning and ending date of the lease term.

If a lease on a homestead property (property where a spouse has dower rights) has a term greater than three years, the landowner's spouse must waive his or her dower rights on the appropriate forms for the lease to be enforceable. These forms are normally attached to the lease agreement.

To be valid and enforceable against a new landowner a lease must be registered against the land title of the leased property. Where there is an actual occupation of the leased property, for a term of not more than three years, the tenant is not required to register the lease (file a caveat) to protect his or her rights in regard to an ownership change.

A lease on mortgaged land is valid and binding against a mortgage holder if the mortgage holder has consented to the lease prior to its registration. Should the landlord default on a mortgage repayment before a lease registration, the mortgage holder could renegotiate the lease or sell the property. It would be wise for a tenant negotiating a lease, with a term greater

than three years, to check the title of the leased property to determine whether consent is required. A photocopy of the title of the leased property can be obtained to see if there are any mortgages registered against it.

The Dower Act

Homestead property under the Dower Act includes land solely owned by the owner where he or she has lived on the land since marriage. A spouse has dower rights in the homestead property and the immediately-surrounding land (up to a maximum of 130 hectares or 320 acres). The spouse must sign a Consent of Spouse form and have it witnessed by a Commissioner of Oaths before the lease can be enforceable.

The Real Property Act

Unless excluded in a lease, the Act provides the landowner and tenant with these rights:

- tenant will pay the required rent at the required time,
- tenant will keep the leased property in good repair,
- landlord can enter the leased land and check its state of repair. If necessary, the landlord can leave a written notice with the tenant requiring him or her to repair the leased property, and the
- landlord can take possession of the leased land if the rent or any other agreement has been in default for more than two months.

Registration of a Lease

To ensure a lease (exceeding three years) is valid and enforceable against a new landowner, it should be recorded on the certificate of title by means of a caveat. The Real Property Act requires a lease agreement to be in proper format to be registered. Sample lease agreement forms available from Manitoba Agriculture meet the required format.

A fee is charged by the Land Titles Office for a lease registration. Land Titles Offices are located in Winnipeg, Brandon, Dauphin, Morden, Neepawa and Portage la Prairie. The Land Titles Registration Districts of Manitoba are outlined in Appendix 5.

Removal of a Lease Registration

After a registered lease has expired, the landlord naturally wishes that it be cancelled from his or her title. The landlord can ask the tenant to complete the "Surrender of Lease" form and register it in the appropriate Land Titles Office. Alternatively, the tenant can complete the "Memorandum of Discharge" form to discharge a caveat. The fees charged are the same as for registrations.

A landlord can remove a registered lease from his or her property by submitting a request to the Registrar of the Land Titles Office. The registrar will serve a "notice to lapse" upon the tenant (caveator). If the tenant does not register a court order within 30 days extending the date of receiving the notice, the caveat will lapse.

Caveat

A caveat is a right which allows a person (other than the owner) to register a claim or interest against the land. The caveat forbids any land sale registration or registration of any claim affecting the land or interest, unless it is subject to the claim of the caveator. Completing the "Caveat Forbidding Registration" and the "Affidavit in Support of Caveat" forms (obtained at a District Land Titles Office) will register the lease on the land title.

Permanent Improvements

Permanent improvements made by a tenant become part of the land and are legally owned by the landlord, unless an agreement to the contrary exists. Permanent improvements include buildings, fences, wells, dugouts, clearing and breaking of land. Prior to making any permanent improvements, a tenant should have written permission from the landlord. It should clearly outline what buildings or improvements are to be made, who will pay the cost of materials and how the tenant will be compensated at the termination of the lease for labour or any costs incurred.

The tenant could be compensated by a:

- reduced rental, or
- cash payment based on the market value of the improvement at the termination of the lease, or
- longer term lease with no increase in the rental.

In situations where a child erects a building (e.g. hog barn) on the parent's land, the same legal implications apply. To protect his or her interest in the building, the child should complete a leasehold agreement with the parent and file a caveat against the parent's title. This would warn potential purchasers that a tenant has an interest in the property which must be honored.

Canadian Wheat Board

It is the policy of the Canadian Wheat Board to issue a special permit book for quota purposes to those grain producers (actual producers and landlords) who have ceased farming operations entirely, but do not have access to a current crop year permit book. This policy also applies to grain producers who have reduced their quota acreage (i.e., by the sale of land or expiry of a lease agreement).

When a lease agreement expires and the tenant ceases to farm the rented property, he or she is eligible to apply for a special permit book to deliver the grain share carry-over produced on the property. If the landlord merely changed tenants he or she does not qualify for a special permit book. The landlord must either deliver his or her share of grain carry-over through the permit book of the new tenant, or sell the grain as non quota grains (e.g., feedlot).

Western Grain Stabilization Plan

Only active farmers are eligible to participate and make contributions to the Western Grain Stabilization Plan. Landlords are not permitted to participate.

A tenant on a Flexible Cash or Cash Lease would be able to make contributions based on total grain sales, while a tenant on a crop share lease would only be able to make contributions based on his or her share of the grain sales.

Termination of a Lease Agreement

A lease may be terminated in any one of the following situations:

- expiration of the lease term.
- surrender of the lease by the tenant.
- sale of property to the tenant. If the tenant had registered the lease by means of a caveat, the caveat must be discharged by the tenant even though the tenant purchases the property.
- foreclosure by a mortgage holder. Unless the mortgage holder has consented to renting the property to the tenant, the tenant will lose his or her right to occupy the property.
- notice to terminate the lease. Lease agreements which do not state a termination date may require a "notice to quit". In a yearly agreement, six months notice would be required prior to termination.
- breach of contract. If a tenant fails to pay rent when it is due, the landlord can repossess the property for breach of contract.
- sale of property to a third party. Unless the tenant has a registered lease, the tenant will lose his or her right to occupy the property. If the tenant actually occupies the property, he or she will maintain his or her rights in regard to a change in ownership.

VII. STEPS IN COMPLETING A LEASE AGREEMENT

1. Consult with your Agriculture Representative, Regional Farm Management Specialist and lawyer.
2. Study and compare the examples and sample lease agreement forms to determine the type of leasing agreement which will best suit the needs of both the landlord(s) or tenant(s). Remember, the lease agreement you choose must be adapted for each individual situation.
3. Determine an equitable "rental arrangement" by first studying the example and then use the worksheet provided for your calculations.
4. READ AND DISCUSS the lease with the prospective landlord(s) or tenant(s) and make changes where desired. Some clauses include a choice of terms. Select the terms which suit your situation. Delete the term which does not apply to you by drawing a line through it; have witness(es) initial the deletion. If the terms do not suit your situation, write out the terms that meet your particular needs. **Wording is important so it is advisable to consult a lawyer.**

   Important lease terms in all lease agreements requiring careful attention by both landlord and tenant include:

   - compensation for repairs to buildings, fences and improvements,

- rights, responsibilities and compensation for major improvements,
- restrictions and responsibilities regarding production practices and management decisions,
- responsibility for grain storage,
- rights and restrictions of storing grain on leased property at beginning of lease and at the end of the lease,
- arbitration.

5. The landlord(s) and tenant(s) should each receive one copy of the lease agreement, with any required supplementary forms attached.

6. Provision should be made on the agreement forms for signatures of joint landlords and tenants.

7. Ensure the requirements of "The Dower Act" are fulfilled when:

   a) the lease term is more than 3 years, and

   b) the leased property is a homestead property.

   The Dower Act requires the spouse give his or her written consent (consent of spouse form) included in Appendix 4 to every lease agreement with a term of more than three years on a homestead property.

   A homestead is any land(s) upon which the husband or wife has lived since his or her marriage in which the husband or wife had an equity or interest (up to a maximum of 130 hectares or 320 acres). This Act also requires the spouse to appear before a solicitor, notary public, justice of the peace, registrar of land titles, local registrar of the Court of Queen's Bench or district court judge to have this form completed. This ensures the spouse understands his or her rights in the homestead and that he or she signs the lease agreement and consent of spouse form of his or her own free will, and consent, and without any compulsion on the part of the husband or wife.

8. Complete the **AFFIDAVIT OF EXECUTION.**

   When all parties have signed a lease agreement, it is final and binding. If the signatures are witnessed and the witness completes the Affidavit of Execution, it is not necessary at a later date to prove the signatures. A sample of this form is included in Appendix 4.

9. Where required, complete the following supplementary forms (included in Appendix 4):

   (a) QUOTA ACREAGE ALLOCATION

   When assignment of quota acres is by mutual agreement, complete the QUOTA ACREAGE ALLOCATION form in duplicate prior to the tenant applying for a Canadian Wheat Board permit book. Attach one copy of the form to each copy of the lease agreement. It outlines what portion of the total quota acres assigned by the tenant are associated with the rented land. In this way, the landlord is assured the desired acres. If the tenant fails

to deliver the landlord's grain, in accordance with these quota acres, a breach of the lease contract has occurred.

(b) CAVEAT

A tenant should register a caveat against the land title of the rental property to protect his or her lease against a change in land ownership.

(c) LEASE RENEWAL FORM

To renew the lease agreement, complete the LEASE RENEWAL FORM, THE DOWER ACT AFFIDAVIT or CONSENT OF SPOUSE, CERTIFICATE OF ACKNOWLEDGEMENT BY SPOUSE, and THE AFFIDAVIT OF EXECUTION. A caveat must also be completed if a tenant is to have an enforceable lease against a new landowner.

(d) CONSENT TO MAKE MAJOR IMPROVEMENTS

The tenant should have the landlord complete, in duplicate, the CONSENT TO MAKE MAJOR IMPROVEMENTS form prior to making major improvements on the rented land. It should clearly outline what buildings or improvements are to be made, who will pay the cost of materials, and how the tenant will be compensated for his or her labour or any costs which he or she may incur. **Attach one copy of each form to each copy of the lease agreement.**

APPENDIX 1

CROP SHARE LEASE
SHARE OF CROP WORKSHEET
(Cost Contribution Approach)

Landlord's Cost Per Cultivated Hectare (Acre)

Investment Costs:

Land

$ _____/hectare (acre)

x _____% _____

Buildings

$ _____/hectare (acre)

x _____% _____

Taxes** _____

Depreciation _____

Repairs _____

Other Costs _____

A. Landlord's Total Costs Per Cultivated Hectare (Acre) _____

Tenant's Cost Per Cultivated Hectare (Acre)

Operating Costs:

Fertilizer* _____

Chemicals* _____

Seed _____

Fuel, Oil and Repairs _____

Miscellaneous _____

Interest on Operating _____

Fixed Costs: _____

Machinery Investment Cost _____

$ _____/hectare (acre) _____

x _____%

Machinery Depreciation _____

Labour _____

B. Tenant's Total Costs Per Cultivated Hectare (Acre) _____

Total Cost Contributions = A + B

$$\text{Landlord's Share} = \frac{A}{A + B} \times 100 = ____\%$$

$$\text{Tenant's Share} = \frac{B}{A + B} \times 100 = ____\%$$

Note:

* Do not include costs which are to be shared in the same proportion as the share of Crop, (e.g. fertilizer and chemicals).

** If land taxes or repairs on the landlord's buildings are paid by the tenant, these should be included with the tenant's costs. Similarly, if the landlord supplies machinery, the investment and depreciation cost should be added to the landlord's costs.

APPENDIX 2
CASH LEASE AND FLEXIBLE CASH LEASE
WORKSHEET A

Landlord's Cost Per Cultivated Hectare (Acre)

Investment Costs:

Land

$ _____/hectare (acre)

x _____% _____

Buildings

$ _____/hectare (acre)

x _____% _____

Taxes** _____

Depreciation _____

Repairs _____

Other Costs _____

A. Landlord's Total Costs Per Cultivated Hectare (Acre) _____

Tenant's Cost Per Cultivated Hectare (Acre)

Operating Costs:

Fertilizer* _____

Chemicals* _____

Seed _____

Fuel, Oil and Repairs _____

Miscellaneous _____

Interest on Operating _____

Fixed Costs: _____

Machinery Investment Cost _____

$ _____/hectare (acre) _____

x _____%

Machinery Depreciation _____

Labour _____

B. Tenant's Total Costs Per Cultivated Hectare (Acre) _____

Total Cost Contributions = A + B = _____

Landlord's Share (C) = $\frac{A}{A + B}$ x 100 = _____%

Discount for Risk (D) = _____% (based on a crop failure of one year in _____)

Adjustment for Risk (R) = C x D = _____% X _____% = _____%

Landlord's Adjusted Share (S) = C - R = _____% - _____% = _____%

Note:

* Include all costs such as fertilizer and chemicals since these are not shared costs.

** If land taxes or repairs on the landlord's buildings are paid by the tenant these should be included with the tenant's costs. Similarly, if the landlord supplies machinery, investment and depreciation costs should be added to the landlord's costs.

APPENDIX 3 (a)
CASH LEASE AND FLEXIBLE CASH LEASE CROP SHARE APPROACH
WORKSHEET B

METRIC (Example on Page 34)

TYPE OF CROP (A)	NUMBER OF HECTARES (B)	YIELD PER HECTARE TONNES (C)	ESTIMATED FINAL REALIZED PRICE PER TONNE (D)	GROSS RETURNS PER HECTARE (E) (C x D)	TOTAL EXPECTED RETURN (F) (B x E)
Summerfallow		nil	nil	nil	nil
TOTALS: (G)				(H)	

For a Cash Lease:

Expected Gross Returns

Per Cultivated Hectare (J) = $\frac{H}{G}$ = $ _____

Cash Rental per Hectare (M) = S x J = _____% x $_____ = $_____

Total Rent = M x G = $_____ x _____ = $_____

For a Flexible Cash Lease:

Crop Used to Determine Rent _____ Grade _____ Delivery Point _____

Average Yield per Hectare (Y) = $\frac{(J)}{\text{Estimated Price/tonne (Col. D above)}}$ = $_____ = _____ tonnes

$_____/tonne

Base Annual Rent per Hectare (L) = S x Y = ____% x tonne = _____ tonnes

Cash Rent per Hectare (M) = L x Actual Price/tonne = _____ tonnes $_____/tonne = $_____/hectare.

Total Cash Rent for Crop Year = M x G = $_____/hectare x _____ hectares = $_____

APPENDIX 3 (b)
CASH LEASE AND FLEXIBLE CASH LEASE CROP SHARE APPROACH
WORKSHEET B

IMPERIAL (Example on Page 35)

TYPE OF CROP (A)	NUMBER OF ACRES (B)	YIELD PER ACRE BUSHELS (C)	ESTIMATED FINAL REALIZED PRICE PER BUSHEL (D)	GROSS RETURNS PER ACRE (E) (C x D)	TOTAL EXPECTED RETURN (F) (B x E)
Summerfallow		nil	nil	nil	nil
TOTALS: (G)				(H)	

For a Cash Lease:

Expected Gross Returns

Per Cultivated Acre (J) = $\frac{H}{G}$ = $_____

Cash Rental per Acre (M) = S x J = _____% x $_____ = $_____

Total Rent = M x G = $_____ x _____ = $_____

For a Flexible Cash Lease:

Crop Used to Determine Rent _____ Grade _____ Delivery Point _____

Average Yield per Acre (Y) (based on crop rotation) = $\frac{(J)}{\text{Estimated Price/bushel (Col. D above)}}$ = $_____ = _____ bushels

$_____/bushel

Base Annual Rent per Acre (L) = S x Y = ___% x bushels = _____ bushels

Cash Rent per Acre (M) = L x Actual Price/bushel = _____ bushels $_____/bushel = $_____/acre.

Total Cash Rent for Crop Year = M x G = $_____/acre x _____ acres = $_____

APPENDIX 4

Supplementary Sample Forms

Supplementary forms are to be used with Crop Share, Cash and Flexible Cash Agreements only when required. Instructions in each of the lease agreements outline when and how to use these forms.

NOTE: Legal advice is recommended.

1. QUOTA ACREAGE ALLOCATION

Re: Land lease agreement between _____
Name(s) of Landlord(s)

and _____
Name(s) of Tenant(s)

on the following farm land and premises:

_____

_____

_____

from the ____ day of _____ , 19 ____ to the _____ day of
(month)

_____ , 19____.
(month)

We the undersigned, do hereby agree that the total quota hectares (acres) associated with the lease for the crop year ending July 31, 19 ____ shall consist of the following:

SEEDED Hectares (Acres)		CALCULATION OF ASSIGNABLE Hectares (Acres)		QUOTA HECTARES Hectares (Acres)	
Grain	Hectares (Acres)	COMPARE:		Grain	Hectares (Acres)
_____	____	Enter 1/3 of Subtotal		_____	____
_____	____	(1)		_____	____
_____	____	Enter Perennial Forage		_____	____
_____	____	(2)		_____	____
_____	____			_____	____
_____	____			_____	____
Summerfallow	_____			_____	____
SUBTOTAL		ADD: ENTER (1) or (2) whichever is smaller	(A)		
Perennial Forage		Enter Subtotal	(B)	Total Quota Hectares (Acres)	
		Equals Total Assignable (A + B) Hectares (Acres)	(C)	* Total Quota Hectares (Acres) should equal Total Assignable Hectares (Acres)	

_____ Witness

_____ Witness

_____ Landord(s)

_____ Tenant(s)

2. CAVEAT FORBIDDING REGISTRATION

To the Registrar of the _____ Land Registration District.

Take notice that I, _____
(insert name and address of caveator)

claim _____
(specify the estate or interest claimed)

In _____
(legal land description)

standing in the register in the name of _____; and I forbid the registration of any person as transferee or owner of, or of any instrument affecting the said estate or interest, unless the instrument or certificate of title, as the case may be, is expressed to be subject to my claim. Appoint _____ as the place at which notices and proceedings relating hereto may be served.

Dated this _____ day of _____ (month), 19 _____.

_____
(Signature of Caveator or his Agent)

3. AFFIDAVIT IN SUPPORT OF CAVEAT

I, _____, make oath and say as follows:

1. I am the within named caveator.
2. I believe I have a good and valid claim upon the said land, and I say this caveat is not being filed for the purpose of delaying or embarrassing any person interested in or proposing to deal therewith.

Sworn before me at _____)
in the Province of Manitoba)
this ____ day of _____ A.D. 19 ____)

_____
(signature of caveator)

_____
A Commissioner for Oaths in and for the Province of Manitoba

4. CONSENT TO MAKE MAJOR IMPROVEMENTS

Re: Land Lease Agreement between _____
Name(s) of Landlord(s)

and _____
Name(s) of Tenant(s)

on the following farm land and premises:

_____

_____

_____

from the _____ day of _____ , 19 ____ , to the _____ day of _____ , 19 ____.

I/We, _____ , do hereby authorize
Name(s) of Landlord(s)

_____ to make the following
Name(s) of Tenant(s)

major improvement on the said land which shall become a part thereof and vest in the landlord at the expiry or termination of the lease.

_____

_____

_____

_____

In so doing, the landlord will make unto the tenant the following compensation for the improvements made:

_____

_____

_____

_____

Dated this _____ day of _____ , 19 ____.

_____ Witness	_____ Landlord(s)	Affix Seal Here
_____ Witness	_____ Landlord(s)	Affix Seal Here

5. LEASE RENEWAL FORM

We, _____ of
Name(s) of Landlord(s)

_____ and
Address(es)

_____ of
Name(s) of Tenant(s)

_____
Address(es)

being parties to a lease agreement for the space of _____ years from the _____ day of _____ (month), 19 ____ to the _____ day of _____ (month), 19 ____ .

on the following farm land premises:

_____

_____

_____

_____

do hereby extend the term of the said agreement for the space of _____ years from the _____ day of _____ (month), 19 ____ to the _____ day of _____ (month), 19 ____ according to the terms and conditions outlined in the said agreement unless specified differently, that is to say:

_____

_____

_____

_____

IN WITNESS WHEREOF the said parties hereto have hereunder set their hands.

Dated this _____ day of _____, A.D. 19 ____ .

_____ Witness	_____ Landlord
_____ Witness	_____ Landlord
_____ Witness	_____ Tenant
_____ Witness	_____ Tenant

6. THE DOWER ACT CONSENT OF SPOUSE

I, _____ , being married to the above named _____ do hereby give my consent to the disposition of our homestead, made in this instrument, and I have executed this Document for the purpose of giving up my life estate and other dower rights in the said property given to me by The Dower Act, to the extent necessary to give effect to the said disposition.

_____
(Signature of Spouse)

Certificate of Acknowledgement by Spouse

1. THIS document was acknowledged before me by _____ _____ apart from her husband (or, his wife).
2. _____ ____ acknowledged to me that he/she:
   (a) is aware of the nature of the disposition or agreement.
   (b) is aware that THE DOWER ACT, gives him/her a life estate in the homestead and the right to prevent disposition of the homestead by withholding consent,
   (c) consents to the disposition or agreement for the purpose of giving up the life estate and other dower rights in the homestead given to him/her by THE DOWER ACT, to the extent necessary to give effect to the said disposition or agreement.
   (d) is executing the document freely and voluntarily without any compulsion on the part of her husband (or, his wife).

Dated at _____ , in the Province of Manitoba this _____ day of _____ A.D. 19 ____.

_____
(Title of Officiating Officer)

7. THE DOWER ACT AFFIDAVIT

I, _____ of _____
in the Province of Manitoba _____
(Occupation)
make oath and say:

1. THAT I am the Lessor named in the within instrument.
2. THAT I am not married.
   or
   THAT neither myself nor my spouse has resided on the within mentioned land at any time since our marriage.

(Occupation)
SWORN before me at _____)
in the Province of Manitoba)
this ____ day of _____ A.D. 19 ____)

_____
(Signature of Landowner)

_____
A Commissioner for Oaths in and for the Province of Manitoba

8. AFFIDAVIT OF EXECUTION

I, _____

of _____ in the Province of

Manitoba make oath and say:

1. That I was personally present and did see _____

_____ named in the within instrument, personally known to me to be the person(s) named therein, duly sign and execute the same for the purpose named therein.

2. That the same was executed at the _____ of _____ in the Province of Manitoba, aforesaid and that I am the subscribing witness thereto.

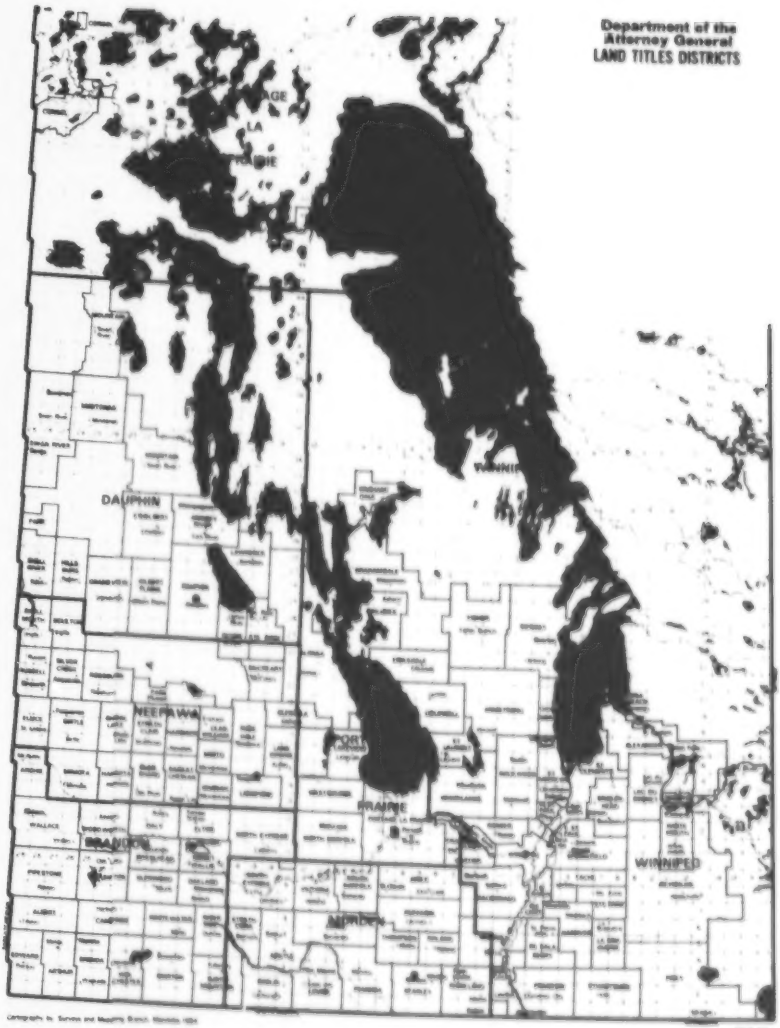
3. That I know the said _____ and he/she/each is in my belief of the full age of eighteen years.

Sworn before me at _____)
in the Province of Manitoba)

_____
(Witness sign here)

this _____ day of _____ A.D. 19____)

_____
A Commissioner for Oaths in and for the Province of Manitoba)


Department of the
Attorney General
LAND TITLES DISTRICTS
DAUPHIN
NEEPAWA
PRAIRIE
WINNIPEG